

**Court File No. CV-17-11846-00CL**

**SEARS CANADA INC.,  
AND RELATED APPLICANTS**

**FIRST REPORT OF FTI CONSULTING CANADA INC., AS MONITOR**

**July 12, 2017**

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE  
CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC.,  
INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS  
FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC.,  
6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041  
ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC. AND  
3339611 CANADA INC.

APPLICANTS

**FIRST REPORT TO THE COURT  
SUBMITTED BY FTI CONSULTING CANADA INC.,  
IN ITS CAPACITY AS MONITOR**

**A. INTRODUCTION**

1. On June 22, 2017, Sears Canada Inc. (“**Sears Canada**”) and a number of its operating subsidiaries (collectively with Sears Canada, the “**Sears Canada Group**” or the “**Applicants**”) sought and obtained an initial order (the “**Initial Order**”) under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). The relief granted pursuant to the Initial Order was also extended to Sears Connect LP, a partnership forming part of the operations of the Sears Canada Group. The proceedings commenced under the CCAA by the Sears Canada Group are referred to herein as the “**CCAA Proceedings**”.
2. The Initial Order, among other things:

- (a) appointed FTI Consulting Canada, Inc. as monitor of the Sears Canada Group (the “**Monitor**”) in the CCAA Proceedings;
  - (b) granted a stay of proceedings against the Sears Canada Group until July 22, 2017 (the “**Stay Period**”);
  - (c) authorized the Sears Canada Group to enter into the DIP Facilities; and
  - (d) scheduled a comeback motion for July 13, 2017 (the “**Comeback Motion**”).
3. The purpose of this first report of the Monitor (the “**First Report**”) is to provide the Court with (i) updated information, and (ii) the Monitor’s comments and recommendations, regarding the following:
- (a) the activities of the Sears Canada Group and the Monitor since the issuance of the Initial Order;
  - (b) the receipts and disbursements of the Sears Canada Group for the two-week period ended July 1, 2017;
  - (c) the Sears Canada Group’s revised and extended cash flow forecasts for the period July 2, 2017 to October 7, 2017 (the “**Revised Cash Flow Forecasts**”);
  - (d) the Sears Canada Group’s motion returnable July 13, 2017 (the “**July 13 Motion**”) seeking:
    - (i) to suspend Special Payments, Supplemental Plan Payments and PRB Plan Payments, each as defined below;
    - (ii) to approve the Liquidation Process, the Agency Agreement and the Consultation Agreement, each as defined below;
    - (iii) to approve the SISP, as defined below;
    - (iv) to approve the amendment and restatement of the Initial Order; and
    - (v) to extend the Stay Period to October 4, 2017; and

(e) the DIP Facilities.

**B. TERMS OF REFERENCE**

4. In preparing this First Report, the Monitor has relied upon audited and unaudited financial information of the Sears Canada Group, the Sears Canada Group's books and records, certain financial information and forecasts prepared by the Sears Canada Group, and discussions with various parties, including senior management ("**Management**") of, and advisors to, Sears Canada (collectively, the "**Information**").
5. Except as otherwise described in this First Report:
  - (a) the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants of Canada Handbook*; and
  - (b) the Monitor has not examined or reviewed the financial forecasts or projections referred to in this First Report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*.
6. Future-oriented financial information reported in or relied on in preparing this First Report is based on Management's assumptions regarding future events. Actual results will vary from these forecasts and such variations may be material.
7. The Monitor has prepared this First Report in connection with the Comeback Hearing and the July 13 Motion. The First Report should not be relied on for any other purpose.
8. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.
9. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the first affidavit of Mr. Billy Wong, the Chief Financial Officer of Sears Canada, sworn on June 22, 2017 (the "**First Wong Affidavit**"), and the second and third affidavits of Mr.

Wong sworn on July 5, 2017 and July 12, 2017 (the “**Second Wong Affidavit**” and the “**Third Wong Affidavit**”, respectively), each filed in support of the July 13 Motion.

**C. THE ACTIVITIES OF THE SEARS CANADA GROUP AND THE MONITOR**

*Notices and Communications-Monitor*

10. In accordance with the Initial Order, the Monitor has established a website at <http://cfcanada.fticonsulting.com/searscanada> (the “**Monitor’s Website**”) on which the Monitor posts periodic updates on the CCAA Proceedings, together with all non-confidential Court materials filed in the CCAA Proceedings. In addition, the Monitor has posted on the Monitor’s Website, “Frequently Asked Questions” in both English and French for the benefit of various stakeholders.
11. In accordance with the Initial Order, the Monitor:
  - (a) posted the Initial Order on the Monitor’s Website on June 22, 2017;
  - (b) published an initial notice containing the information prescribed by the CCAA in La Presse on June 24 and July 1, 2017 and in The Globe and Mail (National Edition) on June 27 and July 4, 2017;
  - (c) posted a list of known creditors of the Sears Canada Group, excluding personal information, on the Monitor’s Website, on June 26, 2017; and
  - (d) sent a notice in the prescribed manner to all known creditors of the Sears Canada Group having a claim exceeding \$1000 on June 27, 2017 and also made this notice available on the Monitor’s Website.
12. On June 30, 2017, the Monitor sent an additional notice of the CCAA Proceedings to known landlords and municipalities via email and direct mail.
13. The Monitor has established a dedicated email address ([searscanada@fticonsulting.com](mailto:searscanada@fticonsulting.com)) and phone numbers (1.416.649.8113 or toll free 1.855.649.8113) for stakeholders who may have questions with respect to the CCAA Proceedings. To date, the Monitor has

received and responded to approximately 450 emails and 200 voicemail messages in both French and English.

*Notices and Communications-Sears Canada Group*

14. On June 22, 2017, Sears Canada issued press releases both before and after the issuance of the Initial Order informing the public, amongst other things, of the CCAA Proceedings and the DIP Facilities.<sup>1</sup>
15. Following the issuance of the Initial Order, Sears Canada also sent emails or letters to various of its stakeholders including employees, retirees, vendors and customers informing them of the CCAA Proceedings and the DIP Financing, amongst other things.
16. In connection with the relief to be sought at the hearing of the July 13 Motion, the Sears Canada Group:
  - (a) sent individual letters to all its active and retired employees (or surviving spouses) advising them, amongst other things, of the appointment of Representative Counsel (as defined below) and of the Comeback Motion; and
  - (b) served its motion record in respect of the July 13 Motion on the evening of July 5, 2017 on (i) the parties listed on the Service List as of that date for these CCAA Proceedings, (ii) all parties with a registered security interest or hypothec against any member of the Sears Canada Group, including holders of purchase money security interests or equivalent constructs in Québec, and (iii) all parties with a registered mortgage against title to any real or immovable property owned by Sears Canada.

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<sup>1</sup> The financing provided pursuant to the DIP Facilities, the “**DIP Financing**” and the lenders providing the DIP Financing, the “**DIP Lenders**”.

Communications with Suppliers

17. Since the commencement of the CCAA Proceedings, Management, with the assistance of the Monitor, has addressed various issues relating to vendors and suppliers that provide goods and/or services to the Sears Canada Group including:
- (a) the terms upon which merchandise suppliers were prepared to provide continued and uninterrupted supply of goods to the Sears Canada Group during the CCAA Proceedings;
  - (b) services provided by contractors and professionals with respect to the construction projects currently under way to convert certain store locations to the Sears Canada “2.0 Stores” format;
  - (c) the terms upon which transportation and logistics service suppliers were prepared to deliver and release merchandise to the Sears Canada Group and continue to provide services in the normal course during the CCAA Proceedings;
  - (d) enquiries from various suppliers with respect to pre-filing obligations owed to them;
  - (e) evaluating the circumstances surrounding certain suppliers that Management considered key to the operations of the Sears Canada Group, assessing available alternatives and when necessary, approving payments in accordance with paragraph 6 of the Initial Order; and
  - (f) requests made by vendors for the payment of deposits, reduced credit terms, cash on delivery (COD), and in limited cases, allegations of trust claims.
18. The Monitor and its counsel have received numerous written and verbal inquiries from suppliers and are working diligently with the Sears Canada Group and its counsel to address these inquiries.

### Letters of Credit

19. As previously reported, letters of credit (“**LCs**”) totalling approximately \$128 million are held by a number of creditors, landlords and suppliers of the Sears Canada Group (“**LC Beneficiaries**”). Following the issuance of the Initial Order, counsel to the Sears Canada Group sent individualized letters to standby LC Beneficiaries advising them of the CCAA Proceedings and asking them to communicate with the Monitor before they draw on an LC.
20. As of July 7, 2017, 9 standby LC Beneficiaries have communicated with the Sears Canada Group or the Monitor and 13 standby LC Beneficiaries and certain beneficiaries of non-standby merchandise LCs have drawn, in whole or in part, on their LCs (collectively, the “**Drawn LC Obligations**”). As at the date of this First Report, the Drawn LC Obligations total \$9.3 million on account of standby LCs and \$5.4 million on account of non-standby merchandise LCs.

### Employee Matters

21. On June 22, 2017, representative counsel for certain groups of employees were appointed by endorsement of Justice Hainey:
  - (a) Koskie Minsky LLP (“**Pension Representative Counsel**”) was appointed as representative counsel to the non-unionized retirees and non-unionized active and former employees of the Sears Canada Group with respect to pension and benefit matters (the “**Pension and Benefits**”); and
  - (b) Ursel Phillips Fellows Hopkinson LLP (“**Employee Representative Counsel**”) was appointed representative counsel for the non-unionized active and former employees of the Sears Canada Group whose rights are affected by the Initial Order with respect to all matters, other than Pension and Benefits.

The Pension Representative Counsel and the Employee Representative Counsel are referred to collectively as “**Representative Counsel**”.

22. The terms of engagement of Representative Counsel were to be reflected in further Orders. With the assistance of this Court, the Sears Canada Group, its counsel and Representative Counsel, with the involvement of the Monitor, its counsel and counsel to the DIP Lenders, have agreed on the final terms of such further Orders. The Sears Canada Group intends to submit these Orders to the Court for issuance at the Comeback Hearing.
23. The Sears Canada Group has terminated a significant number of employees in the months leading to the CCAA Proceedings as well as following the issuance of the Initial Order.
24. As a result of the CCAA Proceedings, the former employees will not be receiving the severance, termination, group benefits or similar payments to which they would otherwise be entitled.
25. The Monitor is cognisant of the fact that the CCAA Proceedings have caused significant hardship to many of the former employees.
26. The Sears Canada Group, the Monitor and the Employee Representative Counsel are discussing possible mechanisms to assist the former employees including:
  - (a) the potential to establish an “Employee Hardship Fund”; and
  - (b) possible avenues to obtain early access to the Wage Earner Protection Program.
27. The Monitor continues to facilitate discussions with Employee Representative Counsel and will report to the Court on the outcome of these discussions.

*Disclaimer of Contracts*

28. As of July 12, 2017, the Sears Canada Group, with the consent of the Monitor, has issued two notices of disclaimer in respect of contracts to which Sears Canada is a party.
29. The Sears Canada Group continues to review the agreements to which it is a party to identify any further disclaimers or resiliations that may be required in connection with the CCAA Proceedings.

Other Activities of the Monitor

30. In addition to the activities listed above, the Monitor has also undertaken the following activities since the commencement of the CCAA Proceedings:
- (a) monitored the Sears Canada Group's receipts and disbursements including the receipts and disbursements of S.L.H. Transport Inc. and Corbeil Électrique Inc.;
  - (b) maintained the current Service List for these CCAA Proceedings and posted regular updates of the Service List to the Monitor's Website;
  - (c) assisted Management in the preparation of the Revised Cash Flow Forecasts;
  - (d) assisted Management in assessing the Sears Canada Group's ongoing merchandise and purchasing requirements;
  - (e) worked with the Sears Canada Group and BMO Nesbitt Burns Inc. as financial advisor to the Sears Canada Group ("**BMO**") in soliciting and evaluating offers to liquidate inventory in those stores identified for closure;
  - (f) worked closely with the Sears Canada Group and the DIP Lenders on matters relating to the DIP Financing;
  - (g) worked with the Sears Canada Group to ensure appropriate accounting for pre-filing and post-filing obligations; and
  - (h) worked with counsel and financial advisors to stakeholders to provide financial and other information.

Observations of the Monitor on the Operations

31. Since the beginning of the CCAA Proceedings, the Sears Canada Group, its Management and the Monitor have worked closely with various stakeholder groups in order to ensure the continued and uninterrupted provisions of goods and services to the Sears Canada Group.

32. The Monitor notes that since the commencement of the CCAA Proceedings:
- (a) the Sears Canada Group, with the support of the Monitor as needed, has come to terms with certain suppliers to provide inventory on a go-forward basis and discussions are on-going with others;
  - (b) certain suppliers have agreed to provide the Sears Canada Group with limited credit terms;
  - (c) there have been limited draws on LCs, although additional draws may be made; and
  - (d) as detailed below, sales have exceeded forecast, indicating strong customer support.
33. The Monitor believes that the relative stability of the Sears Canada Group's business and operations is due to a number of factors including the DIP Financing commitment, the broad communication strategy implemented by the Sears Canada Group and the news of the upcoming SISP.

**D. RECEIPTS AND DISBURSEMENTS FOR THE TWO-WEEK PERIOD ENDING JULY 1, 2017**

34. The Sears Canada Group's actual net cash flow on a consolidated basis for the two-week period ended July 1, 2017 was approximately \$34.1 million, compared to a forecast net cash outflow of \$57.1 million resulting in a positive variance of approximately \$91.3 million as indicated in the table below:

VARIANCE REPORT	Forecast	Actual	Variance
(CAD in Millions)	<b>For the Period Ending July 1, 2017</b>		
<b>Operating Receipts</b>	<b>77.3</b>	<b>109.3</b>	<b>32.0</b>
<b>Operating Disbursements</b>			
Payroll and Employee Related Costs	(25.6)	(23.3)	2.3
Merchandise Vendors	(44.9)	(12.2)	32.7
Non-Merchandise Vendors	(30.0)	(11.8)	18.2
Rent and Property Taxes	(9.0)	(6.6)	2.4
Sales Taxes	(6.0)	(7.8)	(1.8)
Pension	(3.7)	(3.7)	-
IT Costs	-	-	-
Other Operating Disbursements	-	-	-
Capital Expenditures	(1.0)	(0.4)	0.6
<b>Total Operating Disbursements</b>	<b>(120.1)</b>	<b>(65.8)</b>	<b>54.4</b>
<b>Net Operating Cash Inflows / (Outflows)</b>	<b>(42.7)</b>	<b>43.5</b>	<b>86.3</b>
Professional Fees	(5.3)	(4.1)	1.1
Repayments of Existing Credit Facilities	-	-	-
DIP Fees and Interest Paid	(9.2)	(5.3)	3.9
<b>Net Cash Inflows / (Outflows)</b>	<b>(57.1)</b>	<b>34.1</b>	<b>91.3</b>
<b>Cash</b>			
Beginning Balance	125.0	126.5	1.5
Net Cash Inflows / (Outflows)	(57.1)	34.1	91.3
DIP Draws / (Repayments)	-	-	-
<b>Ending Balance</b>	<b>67.9</b>	<b>160.7</b>	<b>92.8</b>

35. Explanations for the key variances are as follows:

- (a) the positive variance in Operating Receipts of approximately \$32.0 million is believed to be a timing difference which is expected to reverse in future forecast periods;
- (b) the positive variance in Payroll and Employee Related Costs of approximately \$2.3 million consists of an approximately \$4.3 million positive timing variance related to disbursements in respect of source deductions, certain benefits, and accrued vacation payouts which is expected to reverse in future forecast periods,

offset by a permanent negative variance of approximately \$2.0 million due to higher-than-forecast salaried payroll amounts;

- (c) the positive variance in Merchandise Vendor disbursements of \$32.7 million is a timing difference resulting from lower purchases than forecast due to on-going discussions with vendors regarding order quantities in light of the Sears Canada Group's restructuring proceedings. The positive variance in Merchandise Vendor disbursements is expected to reverse in future forecast periods;
- (d) the positive variance in Non-Merchandise Vendor disbursements of approximately \$18.2 million is a result of on-going discussions with vendors regarding order quantities, service levels and payment terms during the CCAA Proceedings and is expected to reverse in future forecast periods;
- (e) the positive variance in Rent and Property Taxes of approximately \$2.4 million is a timing difference resulting from payment discrepancies associated with the transition from a monthly to a bi-monthly payment schedule as contemplated in the Initial Order. The Sears Canada Group expects to address these discrepancies prior to the date of the Comeback Hearing;
- (f) the negative variance in Sales Tax disbursements of approximately \$1.8 million consists primarily of payments in respect of Québec sales taxes not contemplated in the CCAA Cash Flow Forecast;
- (g) the positive variance in Professional Fees of approximately \$1.1 million is a timing variance that is expected to reverse in future forecast periods;
- (h) the positive variance in DIP-related disbursements of approximately \$3.9 million is related to the timing of the payment of certain fees provided for under the DIP Facilities which is expected to reverse in future forecast periods; and
- (i) the positive variance in the Beginning Cash Balance is due to differences in preliminary estimates put in the forecast versus the actual bank balances.

36. The Initial Order allowed the Sears Canada Group to continue to utilize their existing Cash Management System as described in the First Wong Affidavit and the pre-filing report of the Monitor. After the commencement of the CCAA Proceedings, the Sears Canada Group has continued to utilize its Cash Management System in a manner consistent with past practice.

**E. REVISED CASH FLOW FORECASTS FOR THE PERIOD ENDING OCTOBER 7, 2017**

37. The Revised Cash Flow Forecast covers the 14 week period ending October 7, 2017 and is attached as Appendix “A” to this First Report.

38. The Revised Cash Flow Forecast shows an operational cash outflow of \$139.9 million, a net cash outflow of \$478.0 million, a paydown of pre-filing indebtedness in the amount of \$299.5 million, and professional fees of \$30.2 million for that period. The Revised Cash Flow Forecast is summarized below:

CAD in millions	
Operating Receipts	\$ 519.2
Operating Disbursements	(659.1)
<b>Operating Cash Inflows / (Outflows)</b>	<b>(139.9)</b>
Professional Fees	(30.2)
Repayment of Existing Credit Facilities	(299.5)
DIP Fees and Interest	(8.4)
<b>Net Cash Inflows / (Outflows)</b>	<b>(478.0)</b>
<b>Cash</b>	
Beginning Balance	160.7
Net Cash Inflows / (Outflows)	(478.0)
DIP Draws / (Repayments)	347.3
<b>Ending Balance</b>	<b>\$ 30.0</b>

39. As shown in the Revised Cash Flow Forecast, the Sears Canada Group will require additional funding for operations totalling approximately \$347.3 million during the period ending October 7, 2017.

40. Pursuant to section 23(1)(b) of the CCAA<sup>2</sup> and in accordance with the Canadian Association of Insolvency and Restructuring Professionals Standard of Practice 09-1, the Monitor hereby reports to the Court as follows:

- (a) the Monitor has reviewed the Revised Cash Flow Forecast, which was prepared by Management for the purpose described in notes to the Cash Flow Forecast (the “**Forecast Notes**”), using the Probable Assumptions and Hypothetical Assumptions set out therein;
- (b) the review consisted of inquiries, analytical procedures and discussion related to information provided by certain members of Management and employees of the Sears Canada Group. Since Hypothetical Assumptions need not be supported, the Monitor’s procedures with respect to the Hypothetical Assumptions were limited to evaluating whether the Hypothetical Assumptions were consistent with the purpose of the Revised Cash Flow Forecast. The Monitor has also reviewed the support provided by Management for the Probable Assumptions and the preparation and presentation of the Revised Cash Flow Forecast;
- (c) based on that review, and as at the date of this First Report, nothing has come to the attention of the Monitor that causes it to believe that:
  - (i) the Hypothetical Assumptions are inconsistent with the purpose of the Revised Cash Flow Forecast;
  - (ii) the Probable Assumptions are not suitably supported or consistent with the plans of the Sears Canada Group or do not provide a reasonable basis for the Revised Cash Flow Forecast, given the Hypothetical Assumptions; or
  - (iii) the Revised Cash Flow Forecast does not reflect the Probable and Hypothetical Assumptions;

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<sup>2</sup> Section 23(1)(b) of the CCAA requires the Monitor to review the Sears Canada Group’s cash-flow statements as to its reasonableness and file a report with the court on the Monitor’s findings.

- (d) since the Revised Cash Flow Forecast is based on assumptions regarding future events, actual results will vary from the forecast even if the Hypothetical Assumptions occur. Those variations may be material. Accordingly, the Monitor expresses no assurance as to whether the Revised Cash Flow Forecast will be achieved. The Monitor also expresses no opinion or other form of assurance with respect to the accuracy of any financial information presented in this First Report, or relied upon by the Monitor in preparing this First Report; and
- (e) the Revised Cash Flow Forecast has been prepared solely for the purpose described in the Forecast Notes. The Revised Cash Flow Forecast should not be relied upon for any other purpose.

## **F. PENSION MATTERS**

- 41. The First Wong Affidavit includes a detailed description of the Sears Pension Plan.
- 42. The Sears Pension Plan consists of a defined benefit component (the “**DB Component**”) and a defined contribution component. Sears Canada acts as both sponsor employer and administrator of the Sears Pension Plan for the purposes of the Ontario Pension Benefits Act, RSO 1990, c. P-8 (the “**PBA**”). The DB Component was closed to new entrants as of June 30, 2008 and all members of the DB Component ceased to accrue pensionable service after June 30, 2008.
- 43. The most recent pension valuation report prepared as at December 31, 2015 indicated the wind-up deficit in the DB Component at that time would have been approximately \$266.8 million and the transfer (wind-up) ratio was 81%. As described below, special payments (whether pursuant to the PBA or the terms of the Sears Pension Plan) in respect of the DB Component are currently required to be made in equal monthly installments of approximately \$3.7 million (the “**Special Payments**”).
- 44. The Monitor has engaged in discussions with both Pension Representative Counsel and its financial advisor, as well as counsel and the financial advisor to the Superintendent of Financial Services (as Administrator of the Pension Benefits Guarantee Fund) (“**PBGF**”) with respect to the DB Component and, in particular, the deficit described above.

45. Pension Representative Counsel and counsel to PBGF have noted that a deemed trust may arise upon a wind up of the DB Component of the Sears Pension Plan. However, at this time the DB Component has not been wound up.
46. At the time of serving this First Report, discussions were ongoing amongst Representative Counsel, counsel to the Monitor, the PBGF, the Sears Canada Group, the DIP Lenders and representatives of the Monitor with respect to the Initial Order and the July 13 Motion as they relate to pension and benefit matters.

**G. REQUEST FOR SUSPENSION OF SPECIAL PAYMENTS, SUPPLEMENTAL PLAN PAYMENTS AND PRB PLAN PAYMENTS**

47. In light of (i) the Sears Canada Group's current liquidity position; (ii) its need to have access to financing pursuant to the DIP Facilities; and (iii) its obligations under the DIP Facilities to comply with the DIP Budget, the Sears Canada Group is seeking an order suspending the obligations of the Sears Canada Group to make:
- (a) the Special Payments;
  - (b) supplemental plan payments being (i) any payments in respect of the Supplemental Plan to the Post-2010 SP Pensioners and (ii) any payment required in respect of any supplemental plan shortfall amounts to the Pre-2010 SP Pensioners (the "**Supplemental Plan Payments**");
  - (c) any payments in respect of the post-retirement health and dental benefits under the post-retirement benefits Plan ("**PRB Plan**") (such payments being the "**PRB Health and Dental Payments**") on and after July 31, 2017; and
  - (d) any payments in respect of the life insurance benefits under the PRB Plan, including premiums for life insurance coverage, (such payments, together with the PRB Health and Dental Payments, the "**PRB Plan Payments**") effective immediately, with life insurance coverage continuing pursuant to the group life insurance policy until July 31, 2017.

### Special Payments

48. As stated above, at December 31, 2015, the reported wind-up deficit under the DB Component of the Sears Pension Plan was approximately \$266.8 million and the transfer (wind-up) ratio was 81%. The Special Payments are approximately \$3.7 million per month. The last payment was made on June 30, 2017.
49. The Sears Canada Group believes that the Special Payments are significant relative to its current financial position, forecasted cash flow relative to the DIP Budget, and its anticipated need to access financing under the DIP Facilities. The Sears Canada Group also believes that it is uncertain that the Sears Pension Plan will be assumed by any purchaser of the Sears Canada business and that any wind up deficit will have to be ultimately addressed in the CCAA Proceedings.
50. The funds required to continue to make the Special Payments are not provided for in the Revised Cash Flow Forecasts or the DIP Budget.

### Supplemental Plan Payments

51. The Supplemental Plan Payments are not governed by the PBA, and are made to enhance pension benefits for certain members of the DB Component of the Sears Pension Plan. The Supplemental Plan Payments are paid:
  - (a) in the case of Pre-2010 SP Pensioners, from a trust fund known as a “Retirement Compensation Arrangement” (“**RCA**”). It is unclear whether there would be shortfall if the RCA was wound-up. However, if such a shortfall did exist, each Pre-2010 SP Pensioner may have a claim against Sears Canada for any such shortfall (the “**Shortfall Amount**”). The Sears Canada Group seeks an Order suspending the obligation to pay any such Shortfall Amount; and
  - (b) in the case of Post-2010 SP Pensioners, from general revenues, and amount to approximately \$7,000 per month.

PRB Plan

52. With respect to the PRB Plan, certain full-time associates hired by the Sears Canada Group prior to 1999 that met the requisite age and service requirements by December 31, 2008 are eligible for post-retirement life, health and dental benefit coverages under the PRB Plan. Benefits under the PRB Plan are provided through a health and welfare trust on a pay-as-you-go basis. There are currently no assets in the health and welfare trust. The Sun Life Assurance Company of Canada (“**Sun Life**”) administers these benefits.
53. Approximately 4,350 retirees and surviving spouses have coverage with respect to post-retirement health and dental benefits under the PRB Plan. The average cost of continuing to pay post-retirement health and dental benefits amounts is approximately \$765,000 monthly plus tax, with an additional monthly payment of approximately \$36,000 for Sun Life’s administration fees. These amounts fluctuate on a monthly basis depending on the claims made.
54. In addition, approximately 3,700 individuals are entitled to life insurance benefits through a group life insurance policy with Sun Life under the PRB Plan. The cost of continuing to make life insurance premium payments under the policy amounts to approximately \$245,000 monthly plus tax.
55. The Sears Canada Group seeks to terminate the benefits under the PRB Plan as of July 31, 2017 to conserve liquidity through the CCAA Proceedings. The Sears Canada Group’s decision will require beneficiaries under the PRB Plan to make alternate arrangements for life, health and dental coverage. The Monitor notes that in the circumstances, it may be difficult for many affected individuals to obtain comparable coverage in the time afforded.
56. At the time of serving this First Report, discussions were ongoing amongst Representative Counsel, counsel to the Monitor, the PBGF, the Sears Canada Group, the DIP Lenders and representatives of the Monitor with respect to the Initial Order and the July 13 Motion as they relate to pension and benefit matters.

## **H. REQUEST FOR APPROVAL OF LIQUIDATION PROCESS, AGENCY AGREEMENT AND CONSULTING AGREEMENT**

57. The Sears Canada Group previously announced that, as part of the completion of its operational restructuring, it intended to close 59 stores (the “**Closing Stores**”) after liquidating the inventory at these stores.
58. Included in the Closing Stores, there are 14 “Sears Hometown” locations. 12 of these 14 stores are operated by independent dealers and two stores are owned and operated by Sears Canada. Four of these stores were already in the process of closing and are expected to be closed on or before July 31, 2017. Inventory and furniture, fixtures and equipment (“**FF&E**”) at these stores are intended to be liquidated by the dealers who operate these locations and Sears Canada in a manner consistent with the prescribed Sale Guidelines (as defined below).
59. On or about June 26, 2017, BMO Nesbitt Burns Inc. as financial advisor to the Sears Canada Group (“**BMO**”) commenced a request for proposal process (“**RFP**”) to solicit proposals from liquidators to assist the Sears Canada Group with the liquidation of the inventory and FF&E at 45 of the Closing Stores operated by the Sears Canada Group.
60. The Monitor understands that BMO contacted a number of parties that BMO determined to have the requisite expertise, qualifications and capability to implement a large scale liquidation of inventory and FF&E.
61. On or about June 27, 2017, BMO sent a solicitation letter and related documents, including a template agency agreement, to 11 parties (either on an individual basis or in the context of a proposed joint venture or other arrangement) who had executed a non-disclosure agreement (an “**NDA**”).
62. Parties who signed an NDA were provided with access to a virtual data room with relevant financial and operational data.
63. The RFP requested proposals for the liquidation of these assets on a guaranteed minimum, fee-for-service or other basis or structure to be agreed upon by the parties.

64. Proposals were required to be received no later than 11:59 p.m. (Toronto time) on June 30, 2017 (the “**Liquidation Bid Deadline**”) and were required to remain open for acceptance until 5:00 p.m. (Toronto time) on July 14, 2017.
65. At the Liquidation Bid Deadline, the Sears Canada Group received five proposals. The proposals included (i) net minimum guarantee or a combination of net minimum guarantee and percentage fee proposals (“**Minimum Guarantee Proposals**”) and (ii) proposals that were based upon a percentage fee applied to realizations (“**Fee Proposals**”). The Sears Canada Group, BMO and the Monitor reviewed all proposals received and provided feedback to a number of the bidders, following which certain bidders chose to update their proposal.
66. The Sears Canada Group, in consultation with BMO, determined that the Minimum Guarantee Proposals received were more advantageous to the Sears Canada Group than the Fee Proposals for a number of reasons including, but not limited to, timing and certainty of payment.
67. As a result, BMO, the Sears Canada Group and the Monitor engaged in discussions with the parties who provided Minimum Guarantee Proposals, to refine and negotiate the terms of their proposals.
68. Following negotiation, the Sears Canada Group, in consultation with BMO and the Monitor, determined that the proposal of a contractual joint venture composed of Gordon Brothers Canada ULC and Merchant Retail Solutions ULC (collectively, the “**Agent**”) was the most favourable proposal (the “**Selected Liquidation Bid**”). A summary of the Minimum Guarantee Proposals is attached hereto as Confidential Appendix “B”. While the financial terms of the Minimum Guarantee Proposals were similar, various practical implementation considerations resulted in the Sears Canada Group selecting the Selected Liquidation Bid. As noted in the Third Wong Affidavit, the two parties that have formed the Agent through a contractual joint venture have conducted an extensive list of major retail liquidations in Canada in recent years.

69. In reaching this conclusion, the Sears Canada Group, in consultation with BMO and the Monitor, compared the financial terms of the Selected Liquidation Bid with the alternative of the Sears Canada Group undertaking the liquidation sale process without the assistance of a third party and concluded that the timing and certainty of cash receipts under the Selected Liquidation Bid was far more expedited and favourable than a self-liquidation option.
70. Subject to the approval of this Court, the liquidation of inventory and FF&E at the Closing Stores (the “**Liquidation Sale**”) is to commence as soon as possible after the Comeback Hearing.
71. The DIP Lenders have advised that the Agent is an acceptable party to conduct the Liquidation Sale at the Closing Stores operated by the Sears Canada Group and the DIP Lenders consent to the terms of the Selected Liquidation Bid.
72. The terms of the Selected Liquidation Bid are included in two agreements: (i) an Agency Agreement entered into amongst the Agent and Sears Canada (the “**Agency Agreement**”), a copy of which is attached as Exhibit “A” to the Third Wong Affidavit; and (ii) a Consulting Agreement between the Agent and Sears Canada (the “**Consulting Agreement**”), a copy of which is attached as Exhibit “B” to the Third Wong Affidavit.
73. The Agency Agreement sets out the terms on which the Agent has been engaged to conduct the Liquidation Sale at the full-line and Sears Home stores (35 of the Closing Stores). The Agency Agreement is conditional upon Sears Canada obtaining an order approving the Agency Agreement no later than July 14, 2017.
74. The Consulting Agreement sets out the terms on which the Agent has been engaged as independent consultant to Sears Canada in connection with the conduct of the Liquidation Sale at the Sears Canada outlet stores (10 of the Closing Stores). The Consulting Agreement is conditional upon Sears Canada obtaining an order approving the Consulting Agreement no later than July 14, 2017.
75. A summary of terms of the Agency Agreement follows:

Stores Included	<ul style="list-style-type: none"> <li>• 35 Closing Stores (full-line and Sears Home)</li> </ul>
Duration	<ul style="list-style-type: none"> <li>• The outside date for completion of the liquidation is October 12, 2017 (subject to extension on agreement by the Agent and Sears Canada, with the approval of the Monitor and the DIP Lender) (the “<b>Sale Termination Date</b>”).</li> <li>• Individual stores may be subject to earlier completion dates, provided that the Agent provides Sears Canada with not less than 21 days’ notice of such earlier completion.</li> <li>• Vacant possession of the applicable Closing Store will be returned to Sears Canada upon completion of the liquidation at such store. Any remaining merchandise or FF&amp;E will (unless otherwise agreed by Sears Canada) be removed from the Closing Store by the Agent.</li> </ul>
Assets Included	<ul style="list-style-type: none"> <li>• FF&amp;E;<sup>3</sup></li> <li>• Inventory in applicable Closing Stores as well as certain in-transit inventory to be delivered to such Closing Stores;<sup>1</sup></li> <li>• Certain sundry goods that may be designated by Sears Canada; and</li> <li>• Certain consignment goods that may be designated by Sears Canada upon receipt of all necessary approvals and authorizations as may be required.</li> </ul>
Excluded Items	<ul style="list-style-type: none"> <li>• Third party owned or consignment goods (unless specifically designated to be included).</li> <li>• Certain defective merchandise.</li> <li>• Goods that were paid for by customers prior to the commencement of the Liquidation Sale but for which delivery has been delayed.<sup>4</sup></li> </ul>

<sup>3</sup> •Any inventory or FF&E remaining at a Closing Store when the Agent’s engagement at such Closing Store has terminated shall be removed by the Agent from the Closing Store (unless otherwise directed by Sears Canada) and, if subsequently sold, the proceeds of such sale shall be dealt with in a manner consistent with other proceeds under the Agency Agreement; provided, however, that Sears Canada may instruct the Agent to abandon any remaining FF&E in place in a neat and orderly manner at the end of the Liquidation Sale at the store where such FF&E is located.

<sup>4</sup> The Agency Agreement provides the purchaser 21 days following the commencement of the Liquidation Sale to pick up such goods. If such goods are not picked up by the customer, such goods shall be retrieved by Sears Canada.

	<ul style="list-style-type: none"> <li>• In-transit merchandise that arrives after a prescribed deadline.</li> </ul>
Sale Terms	<ul style="list-style-type: none"> <li>• Inventory and FF&amp;E will be sold free and clear of encumbrances and all sales will be final.</li> </ul>
Proceeds Account	<ul style="list-style-type: none"> <li>• Proceeds shall be collected through the Sears Canada point of sale system and shall be deposited in depository accounts designated by and in the name of Sears Canada and are to be held in trust for the Agent and Sears Canada, as the case may be, to be dealt with in accordance with the terms of the Agency Agreement.</li> </ul>
Payments by Agent	<p>Payments to be received by Sears Canada include:</p> <ul style="list-style-type: none"> <li>• a guaranteed minimum recovery of 80% of the cost value of the inventory included in the Liquidation Sale at the full-line stores and 52.5% of the cost value of the inventory included in the Liquidation Sale at the Sears Home stores. The guaranteed minimum recovery will be paid in two tranches: <ul style="list-style-type: none"> <li>(i) 70% of the estimated guaranteed amount based upon cost value reflected in the Sears Canada books and records, to be paid within one business day following entry of the order approving the Agency Agreement;</li> <li>(ii) the balance of the guaranteed amount to be paid not later than 30 days after the commencement of the Liquidation Sale, subject to resolution of any disputes with respect to the inventory reconciliation process;</li> </ul> <p>Guaranteed amounts applicable to in-transit inventory that arrives at an applicable Closing Store after the commencement of the Liquidation Sale will be reconciled on a weekly basis. The guarantee percentages are also subject to adjustment based upon a final reconciliation and determination of the cost value and retail mark up on the inventory sold.</p> </li> <li>• 50% of remaining proceeds of the inventory liquidation after accounting for (i) the guaranteed minimum amount described above; (ii) expenses of the Liquidation Sale at the applicable Closing Stores; and (iii) the base fee of the Agent equal to 5% of aggregate cost value of inventory at the applicable Closing Stores, which shall be reconciled at completion of the Liquidation Sale.</li> <li>• 82.5% of net FF&amp;E proceeds and designated sundry goods and designated consignment goods proceeds (net of the fee of the</li> </ul>

	<p>Agent equal to 17.5% of these proceeds).<sup>5</sup></p> <p>A letter of credit is to be posted by the Agent (the “<b>Agent L/C</b>”) to cover its payment obligations under the Agency Agreement. The Agent L/C will have an expiry date not earlier than 60 days after the Sale Termination Date, subject to extension. The Agent L/C will be in an amount equal to 30% of the estimated guaranteed amount plus three weeks estimated expenses payable by the Agent.</p> <p>Net proceeds not paid to Sears Canada as set out above will be received by the Agent.</p>
Expenses	<ul style="list-style-type: none"> <li>• Store level operating expenses at liquidating stores will be paid out of liquidation proceeds in excess of the guaranteed minimum payment to Sears Canada. To the extent such proceeds are insufficient to pay these expenses, these expenses are to be paid by the Agent.</li> <li>• Sears Canada shall be responsible for half of the inventory taking costs and any non-store level overhead costs.</li> </ul>
Intellectual Property	<ul style="list-style-type: none"> <li>• The Agent shall have the right to use all logos, trademarks, brand names and other intellectual property utilized by Sears Canada in connection with the business.</li> </ul>
Agent’s Charge	<ul style="list-style-type: none"> <li>• The Agency Agreement requires that the Agent have the benefit of a Court-ordered first ranking charge on the merchandise, FF&amp;E and proceeds of the Liquidation Sale at the Closing Stores that are the subject of the Agency Agreement to cover amounts owed to the Agent under the Agency Agreement. This charge shall become effective upon the first business day following court approval of the Agency Agreement.</li> </ul>

76. The Agency Agreement may be terminated if Sears Canada becomes bankrupt and the Agent’s rights under the Agency Agreement are terminated or materially impaired.

77. A summary of the terms of the Consulting Agreement follows:

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<sup>5</sup> Agent and Sears Canada may, with the consent of the Monitor and the DIP Lender, agree upon a lump sum guarantee payment with respect to FF&E in place of the above this commission arrangement.

- (a) the Agent will serve as an independent consultant to Sears Canada in connection with the conduct of the Liquidation Sale at the outlet stores (10 stores);
- (b) the Liquidation Sale at the outlet stores shall commence on or about July 21, 2017 and shall terminate on October 12, 2017 subject to further extension as agreed upon by Sears Canada, the Agent, the Monitor and the DIP Lenders;
- (c) the Agent shall provide full time supervisors to, among other things, supervise and conduct the Liquidation Sale, provide Sears Canada with oversight, supervision and guidance, recommend appropriate advertising, and advise Sears Canada as to appropriate pricing and discounting of merchandise;
- (d) the Agent's fee shall be equal to 1.75% of gross proceeds of merchandise sold during the term of the Liquidation Sale (including sales paid for through gift cards) and 17.5% of gross receipts from the sale of FF&E, to be paid weekly, subject to a final reconciliation;
- (e) Sears Canada shall be responsible for expenses in connection with the Liquidation Sale, provided, however, that certain Consultant Controlled Expenses (as defined in the Consulting Agreement) will only be paid by Sears Canada in accordance with budgeted amounts, which may be modified as mutually agreed by Sears Canada and the Agent with approval of the Monitor;
- (f) Sears Canada will reimburse the Agent weekly for all Consultant Controlled Expenses incurred or paid directly by the Agent, subject to the budget agreed with the Agent and subject to final reconciliation;
- (g) proceeds of the Liquidation Sale at the outlet stores shall be placed into Sears Canada's existing store-level deposit accounts;
- (h) unless otherwise directed by Sears Canada to abandon FF&E at the leased premises, the Agent shall remove all remaining FF&E at the completion of the term of the Liquidation Sale;

- (i) the Agent does not provide any guarantee regarding results of the Liquidation Sale at the outlet stores; and
  - (j) gift cards, gift certificates and merchandise credits will be honoured. Returns will not be permitted.
78. The Agency Agreement and the Consulting Agreement provide the Agent with the right to syndicate the transactions contemplated by the Agency Agreement and the Consulting Agreement to one or more third parties previously disclosed to Sears Canada on notice to Sears Canada. On July 12, notice was provided by the Agent that the transactions contemplated by the Agency Agreement and the Consulting Agreement will be syndicated with Tiger Capital Group and Great American Group or their affiliates.
79. The Agency Agreement and the Consulting Agreement incorporate certain sale guidelines that describe the process for conducting the Liquidation Sale at all Closing Stores (the “**Sale Guidelines**”). The Sale Guidelines were developed in consultation with the Monitor and are, in all material respects, consistent with the sale guidelines used in other recent retail store liquidation processes approved by the Court.
80. The Monitor considered the process leading to the Agency Agreement and the Consulting Agreement and the consideration to be received in respect of the Liquidation Sale in light of the requirements of, *inter alia*, section 36 of the CCAA. The Monitor is of the view that the Agency Agreement and the Consulting Agreement provide the best guaranteed realization on the inventory and FF&E at the Closing Stores operated by the Sears Canada Group.
81. The liquidation of FF&E and inventory at those Closing Stores will provide much needed liquidity to the Sears Canada Group and the completion of the Liquidation Sale will eliminate significant ongoing costs that are being incurred by the Sears Canada Group.
82. The realization of the assets at the Closing Stores is part of a broader restructuring process for the Sears Canada Group. It is not feasible at this time to conduct the Liquidation Sale at the Closing Stores through a bankruptcy without prejudicing the efforts in the SISP. Further, the Monitor does not believe that a realization of these assets

in a bankruptcy process would provide any additional benefit to the Sears Canada Group or its stakeholders even if such an option was viable.

**I. REQUEST FOR APPROVAL OF THE SALE AND INVESTMENT SOLICITATION PROCESS**

83. At the commencement of the CCAA Proceedings, the Sears Canada Group advised that it intended to serve a motion seeking the Court's approval of a comprehensive and flexible sale and investor solicitation process that would solicit a broad range of potential transactions (the "**SISP**"). The draft of the SISP filed in connection with the July 13 Motion is attached as Appendix "C" hereto.
84. The Sears Canada Group is now seeking an Order approving the SISP, and the actions of the Sears Canada Group, the Monitor and BMO that may be necessary or desirable to carry out the SISP.
85. The SISP includes the following material terms:
- (a) the SISP solicits bids and proposals for a broad range of transaction alternatives involving the business, assets and leases of the Sears Canada Group, whether *en bloc* or any portions thereof;
  - (b) the SISP shall be conducted by BMO on behalf of the Sears Canada Group and under the supervision of both the Special Committee of the Board of Directors of Sears Canada (the "**Special Committee**") and the Monitor;
  - (c) all parties wishing to have their bids or proposals with respect to the business, assets and/or leases of the Sears Canada Group considered shall participate in the SISP in accordance with the procedures set out therein, including the signing of a non-disclosure agreement;
  - (d) potential bidders participating in the SISP will have access to an electronic data room and due diligence information;
  - (e) parties interested in pursuing a transaction (other than a lease transaction described below) must submit binding bids ("**Binding Bid**") based upon a form of

model transaction document prepared by the Sears Canada Group, in consultation with the Monitor, on or before 5:00 p.m. (Toronto time) on August 31, 2017 (the “**Binding Bid Deadline**”), which Binding Bid must be accompanied by, among other things, duly executed transaction documents, evidence of a firm, irrevocable commitment for all required funding, and a cash deposit of 10% of the total cash purchase price contemplated by such bid. All deposits will be held by the Monitor;

- (f) Binding Bids cannot be conditional upon the outcome of unperformed due diligence and/or obtaining financing and must be irrevocable until 20 business days following the Binding Bid Deadline;
  - (g) any landlord that wishes to submit a proposal in connection with an existing lease to which such landlord is a party (a “**Binding Lease Proposal**”) must submit such offer in binding form on or before 5:00 p.m. (Toronto time) on August 15, 2017 (the “**Binding Lease Proposal Deadline**”) and such offer must be irrevocable until 20 business days following the Binding Bid Deadline. To the extent a landlord intends to submit a proposal contemplating a material modification to such landlord’s existing lease, such landlord must consent to the Sears Canada Group sharing such proposal with other bidders in the SISP;
  - (h) the Sears Canada Group, with the consent of the Monitor, BMO, and the DIP Lenders, may waive compliance with certain of the requirements of the SISP;
  - (i) following the Binding Bid Deadline or the Binding Lease Proposal Deadline, as applicable, the Sears Canada Group shall consult with the Monitor, BMO and the DIP Lenders and decide whether to continue negotiations with a select number of bidders or select one or more non-overlapping bids (the “**Successful Bids**”); and
  - (j) Successful Bids will be brought forward for Court approval.
86. The Sears Canada Group shall have no obligation to complete any transaction in connection with the SISP.

87. Any sales of the business, assets or leases in connection with the SISP will be on an ‘as is, where is’ basis, without surviving representations or warranties of any kind except as set forth in definitive transaction documents.
88. The SISP provides certain protections intended to limit the disclosure of confidential bid-related information and to maintain the integrity of the sale process:
- (a) certain members of management of Sears Canada have advised the Special Committee and Sears Canada’s advisors that they intend to submit a bid or proposal in the SISP (the “**Management Bid**”). Management of Sears Canada involved in the design and development of any bid or proposal will not be provided with confidential information on matters related to the SISP, including regarding any participants therein, any bids received or the terms thereof (the “**Confidential Information**”);
  - (b) the SISP provides that the Special Committee (which is independent of any participants in the Management Bid) may participate in negotiations and give instructions to Sears Canada’s advisors in respect of and relating to the SISP;
  - (c) if any DIP Lender intends to participate as a bidder in the SISP, such party must give written notice to BMO, with a copy to the Monitor, of such intention before July 17, 2017. Any DIP Lender that provides such notice will also not be provided with any Confidential Information and any DIP Lender that does not provide such notice by July 17, 2017 will not be permitted to participate as a bidder in the SISP; and
  - (d) certain highly sensitive information regarding the identity of bidders, particular assets, leases or businesses that are the subject of a particular Binding Bid or Binding Lease Proposal, the proposed purchase price for the business, assets and/or leases identified in any Binding Bid or Binding Lease Proposal and the number of bidders will be made available only to a restricted group of representatives and/or categories of representatives of the Sears Canada Group,

the Monitor and the DIP Lenders. The Monitor will maintain a list of such representatives and/or categories of representatives.

89. The documents governing the Sears Canada Group's DIP Financing require that the Order approving the SISP must be granted on or before July 21, 2017.
90. The anticipated completion date of all transactions contemplated by the SISP is no later than October 25, 2017.
91. The SISP is intended to operate in parallel with the proposed process to liquidate assets at the Closing Stores and the draft Order approving the SISP provides that Sears Canada will seek bids for liquidation of remaining inventory and FF&E not otherwise included in a Successful Bid.
92. The Monitor understands that over 20 parties have already signed non-disclosure agreements with the Sears Canada Group. The Sears Canada Group continues to negotiate non-disclosure agreements including with advisors to ESL and Fairholme Capital Management, LLC, the two principal shareholders of Sears Canada. On July 10, ESL issued a press release indicating its interest in evaluating, discussing and considering a potential negotiated transaction.
93. The Monitor believes that the SISP provides:
  - (a) the flexibility necessary for the Sears Canada Group to consider the broad range of potential transactions that may be available to generate value from the business and assets of the Sears Canada Group;
  - (b) appropriate oversight by the Monitor and the Special Committee and a process that should encourage and facilitate bidding by interested parties; and
  - (c) a process that is reasonable in the circumstances, including in view of the milestones established under the DIP Facilities.
94. The Monitor is of the view that the SISP is the best viable alternative for the Sears Canada Group at this time and provides an opportunity to identify going-concern

transactions that would benefit the stakeholders of the Sears Canada Group as a whole. The SISP must proceed on an expedited basis given (i) the liquidity position of the Sears Canada Group; and (ii) the need to identify going-concern transactions on an expedited basis to stabilize the business as steps are taken to invest for the critical holiday season.

95. The Monitor is aware that a number of stakeholders are concerned as to the potential conflict of interest presented by the development and submission of a Management Bid. The Monitor is cognizant of these concerns and will work closely with BMO, the Special Committee and management to prevent such potential conflicts interfering with the proper conduct of the SISP.
96. The Monitor wishes to emphasize that the deadlines under the SISP are short and reflect the significant liquidity constraints of the Sears Canada Group even with the benefit of the DIP Financing. Any material delay in the SISP process may significantly undermine its effectiveness given the already short timetable.
97. The Monitor is aware that parties with rights of first refusal or purchase options in respect of Sears Canada's owned and leased real properties may make submissions with respect to the treatment of such rights in connection with any asset sales that the Sears Canada Group may seek to implement through the SISP. At the time of serving this First Report, discussions were ongoing amongst counsel to the Sears Canada Group, the Monitor, its counsel and counsel to various landlords with a view to reaching consensual agreement on these points.

## **J. DIP FINANCING**

98. The Initial Order approved DIP Financing under the following two agreements, which are not independently available:
  - (a) a senior secured super-priority debtor-in-possession amended and restated credit agreement amongst, *inter alia*, Well Fargo Capital Finance Corporation Canada, as agent, Sears Canada, as borrower, and other members of the Sears Canada Group, as guarantors (the "**DIP ABL Credit Agreement**") and

- (b) a senior secured super-priority credit agreement among, *inter alia*, GACP Finance Co., LLC, as agent, Sears Canada, as borrower, and other members of the Sears Canada Group, as guarantors (the “**DIP Term Credit Agreement**”).
99. The DIP ABL Credit Agreement amends and restates the Sears Canada pre-filing ABL credit agreement (the “**Wells Pre-Filing Credit Agreement**”).
100. Sears Canada and certain subsidiaries are also parties to a secured pre-filing term credit facility provided under a credit agreement between GACP Finance Co., LLC, as administrative agent, and Sears Canada, as borrower, dated March 20, 2017 (the “**Pre-Filing Term Credit Agreement**”).
101. As of June 19, 2017, approximately \$42 million was owing on the revolving facility under the Wells Pre-Filing Credit Agreement and approximately \$128 million of letters of credit were outstanding under the Wells Pre-Filing Credit Agreement.
102. As of June 22, 2017, Sears Canada had accessed US \$93.9 million of advances under the Pre-Filing Term Credit Agreement.
103. A summary of the material terms of the DIP Financing is provided in the pre-filing report of the Monitor and not repeated herein.
104. The Monitor understands that certain stakeholders have raised questions regarding the quantum and timing of the DIP Financing.
105. The Monitor is of the view that the Sears Canada Group has benefited, and will continue to benefit, from immediate access to interim financing in the amounts provided by the DIP Financing for several reasons, including:
- (a) while the Sears Canada Group did have cash on hand to satisfy limited essential cash expenditures for a period following the commencement of the CCAA Proceedings, the Sears Canada Group does not have sufficient cash on hand to satisfy the obligations that will arise from significant orders to be placed with vendors during the summer months so that inventory will be available for the fall and winter seasons;

- (b) the Sears Canada Group forecasts that it will issue payments for merchandise totalling \$353.7 million as outlined in the Revised Cash Flow Forecasts. These purchases will have a significant impact on the cash position of the Sears Canada Group. The Sears Canada Group can only incur these substantial post-filing obligations to suppliers and support its working capital needs if it has comfort that sufficient liquidity will be available through the DIP Facilities;
  - (c) committed interim financing allows the Sears Canada Group to give comfort to vendors and other trade creditors that purchase orders issued will be paid for, thus
    - (i) avoiding potential demands for additional security deposits that would materially negatively impact liquidity, and
    - (ii) allowing Sears Canada to place orders for merchandise that (A) is specifically made and branded for Sears Canada, (B) must be ordered with long lead times and (C) suppliers would not otherwise be easily able to monetize if Sears Canada could not accept delivery and make payment therefor. While continued supply of inventory is an issue that arises in many insolvencies, given the Sears Canada Group's specific inventory needs, the fact that the inventory is not fungible and the lead time needed to make the inventory, the Sears Canada Group will be significantly prejudiced by any disruption in its supply chain;
  - (d) the SISP contemplates going-concern sale options and the Sears Canada Group must adequately support its operations with funding during these proceedings to allow for a potential going-concern emergence from the proceedings with appropriate inventory and working capital; and
  - (e) in the Monitor's view, the DIP Financing has provided relative stability to date in the CCAA Proceedings.
106. After full consideration of alternatives and consultation with BMO, the Sears Canada Group determined that the existing secured lenders were the only viable sources of secured interim financing in the amount required by the Sears Canada Group that could be implemented on required timelines. The Monitor notes the following in connection with the Sears Canada Group's conclusion on this point:

- (a) the short deadlines under the SISP;
  - (b) BMO has advised that any suitable alternative financing arrangements would have required material due diligence and a significant amount of time to complete;
  - (c) it is reasonable to assume that any potential provider of interim financing to the Sears Canada Group would have required a super-priority charge to secure all obligations, which would rank ahead of the security of the pre-filing secured lenders; and
  - (d) the Monitor has been advised by counsel to the pre-filing secured lenders that the pre-filing secured lenders would have opposed any such super-priority charges. Any dispute with the pre-filing secured lenders would have likely significantly delayed the availability of any interim financing facility, which would be problematic for the reasons set out above.
107. For the foregoing reasons, together with the reasons set out in the Monitor's pre-filing report, the Monitor continues to support the approval of the DIP Facilities and the DIP Financing provided thereunder.
108. The Monitor identified one concern with respect to the DIP Financing that has now been addressed to the satisfaction of the Monitor. The DIP ABL Credit Agreement contained a provision that any reimbursement obligations arising from draws made after the filing date on letters of credit issued under the Wells Pre-Filing Credit Agreement (defined above as the Drawn LC Obligations) would be deemed to be advances under the DIP ABL Credit Agreement. A provision confirming this treatment of the Drawn LC Obligations is contained in paragraph 43 of the Initial Order. While it does not appear that this specific issue has been the subject of extensive consideration in past CCAA proceedings, upon further consideration following the granting of the Initial Order, the Monitor raised a concern regarding the possible non-compliance of such a provision with Section 11.2 of the CCAA. While not agreeing with the Monitor's concern, the DIP Lenders understood the Monitor's questions and responded by agreeing that the Drawn

LC Obligations will be treated in the same manner as amounts advanced prior to the CCAA Proceedings under the Wells Pre-Filing Credit Agreement, as described below.

109. Sears Canada and the DIP Lenders have entered into amendments to the DIP ABL Credit Agreement and the DIP Term Credit Agreement (collectively, the “**Amendments**”) reflecting these revised terms and other ancillary administrative amendments. Copies of the Amendments are attached hereto as Appendices “D” and “E”. Sears Canada will also request that paragraph 43 of the Initial Order be deleted to reflect this modified arrangement.
110. The DIP ABL Credit Agreement and the DIP Term Credit Agreement provide that all cash receipts from the sale of property or assets (including existing cash on hand) will be applied as follows:
  - (a) First, to repay obligations under the revolving component of the Wells Pre-Filing Credit Agreement;
  - (b) Second, to cash collateralize letters of credit that are undrawn and that were issued under the Wells Pre-Filing Credit Agreement; and
  - (c) Third, to repay the obligations under the Pre-Filing Term Credit Agreement.

As noted above, the Drawn LC Obligations will now also be repaid as part of item (a) above, along with the revolving component of the Wells Pre-Filing Credit Agreement.

111. The lenders under the DIP Financing required that their pre-filing collateral be used to repay their pre-filing obligations before repaying the post-filing obligations under the DIP Financing. The Monitor is not aware of any other party that at this time holds a priority interest in the proceeds that would be used to repay the pre-filing obligations under the Wells Pre-Filing Credit Agreement and the Pre-Filing Term Credit Agreement. The Monitor notes that this type of repayment arrangement has been considered and accepted by this Court in past CCAA proceedings. The funds provided by the DIP Financing are not used to repay any pre-filing obligations.

112. The Monitor has carefully considered the DIP Facilities and the SISP and their impact on stakeholders. In the Monitor's view, the implementation of the SISP and the efforts to identify and complete a going concern transaction thereunder provide the best opportunity to preserve employment for Sears Canada Group employees, reduce claims by Sears Canada Group creditors and preserve the benefits that the continuation of the Sears Canada Group's operations would provide to an extensive range of stakeholders.
113. The Monitor understands the Sears Canada Group will consume inventory and cash during the SISP. The Monitor will monitor progress and will inform the Court if it appears likely that a going concern outcome will not result from the SISP.

**K. REQUEST FOR AN EXTENSION OF THE STAY PERIOD**

114. The Stay Period currently expires on July 22, 2017. The Sears Canada Group requires additional time to implement the SISP and consummate the transactions contemplated in the Agency Agreement and the Consulting Agreement.
115. The Revised Cash Flow Forecasts demonstrate that, subject to the underlying assumptions, the Sears Canada Group has sufficient liquidity to fund its operations during the CCAA Proceedings to October 4, 2017.
116. The Monitor believes that the Sears Canada Group has acted and continues to act in good faith and with due diligence and that circumstances exist that make an extension of the Stay Period appropriate.
117. Based on the information currently available, the Monitor also believes that creditors of the Sears Canada Group would not be materially prejudiced by an extension of the Stay Period to October 4, 2017.
118. The Monitor supports the Sears Canada Group's request for an extension of the Stay Period to October 4, 2017.

**L. CONCLUSION**

119. After consideration of the options available to the Sears Canada Group at this time and the impact of the DIP Facilities and the SISP on all stakeholders, the Monitor on balance

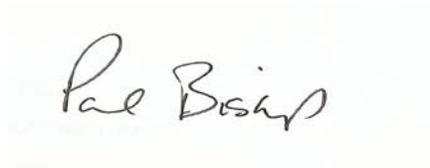
supports the Sears Canada Group's request for approval of the extension of the Stay Period and the SISP and supports the Court's continued approval of the DIP Facilities and the amendment and restatement of the Initial Order as set out herein.

120. The Monitor also recommends that the Court approve the Agency Agreement, the Consulting Agreement and the process as reflected in the Agency Agreement, the Consulting Agreement and the Sale Guidelines.

The Monitor respectfully submits to the Court this, its First Report.

Dated this 12<sup>th</sup> day of July, 2017.

FTI Consulting Canada Inc.  
In its capacity as Monitor of  
Sears Canada Inc. and the other corporations in the Sears Canada Group

A handwritten signature in black ink that reads "Paul Bishop". The signature is written in a cursive style with a large initial "P".

Paul Bishop  
Senior Managing Director

A handwritten signature in blue ink that reads "Greg Watson". The signature is written in a cursive style with a large initial "G".

Greg Watson  
Senior Managing Director

**APPENDIX "A"**  
**REVISED CASH FLOW FORECASTS**

## Sears Canada Group

### CCAA Cash Flow Forecast

(CAD in thousands)

Week Ending (Saturday)	8-Jul-17	15-Jul-17	22-Jul-17	29-Jul-17	5-Aug-17	12-Aug-17	19-Aug-17	26-Aug-17	2-Sep-17	9-Sep-17	16-Sep-17	23-Sep-17	30-Sep-17	7-Oct-17	14-Week	
CCAA Filing Week	3	4	5	6	7	8	9	10	11	12	13	14	15	16	Total	
<b>Receipts</b>																
Trade Receipts	[2]	37,528	32,797	34,126	34,045	30,380	25,575	31,513	34,757	32,701	29,676	29,350	29,737	30,349	30,229	442,761
Other Receipts	[3]	-	3,028	35,249	2,746	4,112	3,334	16,286	2,483	1,885	1,290	1,281	4,233	555	-	76,483
<b>Total Receipts</b>		<b>37,528</b>	<b>35,825</b>	<b>69,374</b>	<b>36,792</b>	<b>34,491</b>	<b>28,909</b>	<b>47,800</b>	<b>37,240</b>	<b>34,586</b>	<b>30,965</b>	<b>30,632</b>	<b>33,970</b>	<b>30,903</b>	<b>30,229</b>	<b>519,244</b>
<b>Operating Disbursements</b>																
Payroll and Employee Related Costs	[4]	(17,980)	(1,725)	(13,025)	(6,110)	(16,837)	(256)	(9,352)	(4,152)	(14,630)	(256)	(9,056)	(6,863)	(10,125)	(5,830)	(116,198)
Merchandise Vendors	[5]	(5,977)	(22,501)	(19,512)	(15,125)	(22,568)	(28,014)	(25,077)	(23,885)	(27,307)	(22,758)	(27,526)	(30,085)	(41,308)	(42,026)	(353,669)
Non-Merchandise Vendors	[6]	(4,926)	(12,004)	(11,326)	(10,326)	(14,539)	(5,632)	(6,310)	(5,632)	(17,021)	(5,223)	(4,884)	(5,562)	(4,884)	(10,746)	(119,018)
Rent and Property Taxes	[7]	(2,647)	(9,075)	-	-	(9,049)	-	(4,808)	-	(9,046)	-	(4,808)	-	-	(8,117)	(47,551)
Sales Taxes	[8]	-	-	(852)	(10,087)	-	-	(4,330)	-	-	-	(694)	(1,206)	-	-	(17,169)
Pension	[9]	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
IT Costs	[10]	-	-	-	-	(12,767)	-	-	-	-	-	-	-	-	-	(12,767)
Recovery of Expenses from Agent	[11]	-	-	1,820	660	2,552	964	2,552	535	2,207	535	1,761	612	1,226	-	15,423
Capital Expenditures	[12]	(0)	(897)	(897)	(897)	(730)	(730)	(730)	(630)	(424)	(424)	(424)	(424)	(424)	(518)	(8,151)
<b>Total Operating Disbursements</b>		<b>(31,530)</b>	<b>(46,202)</b>	<b>(43,791)</b>	<b>(41,884)</b>	<b>(73,938)</b>	<b>(33,669)</b>	<b>(43,726)</b>	<b>(38,095)</b>	<b>(66,223)</b>	<b>(28,127)</b>	<b>(44,938)</b>	<b>(43,018)</b>	<b>(56,722)</b>	<b>(67,237)</b>	<b>(659,100)</b>
<b>Net Operating Cash Inflows / (Outflows)</b>		<b>5,998</b>	<b>(10,377)</b>	<b>25,584</b>	<b>(5,093)</b>	<b>(39,447)</b>	<b>(4,760)</b>	<b>4,074</b>	<b>(855)</b>	<b>(31,637)</b>	<b>2,838</b>	<b>(14,306)</b>	<b>(9,048)</b>	<b>(25,819)</b>	<b>(37,008)</b>	<b>(139,856)</b>
<b>Net Cash Inflows / (Outflows)</b>																
Professional Fees	[13]	(3,395)	(2,401)	(7,322)	(1,842)	(1,672)	(1,588)	(1,446)	(1,446)	(1,446)	(1,644)	(1,503)	(1,503)	(1,503)	(1,503)	(30,215)
Repayments of Existing Credit Facilities	[14]	-	(131,037)	(69,374)	(36,792)	(34,491)	(27,834)	-	-	-	-	-	-	-	-	(299,528)
DIP Fees and Interest Paid	[15]	-	(4,104)	(354)	(354)	(354)	(354)	(354)	(354)	(354)	(354)	(354)	(354)	(354)	(354)	(8,355)
<b>Net Cash Inflows / (Outflows)</b>		<b>2,604</b>	<b>(147,920)</b>	<b>(51,467)</b>	<b>(44,080)</b>	<b>(75,965)</b>	<b>(34,536)</b>	<b>2,273</b>	<b>(2,656)</b>	<b>(33,438)</b>	<b>840</b>	<b>(16,163)</b>	<b>(10,905)</b>	<b>(27,676)</b>	<b>(38,865)</b>	<b>(477,955)</b>
<b>Cash</b>																
Beginning Balance		160,678	163,282	165,362	128,795	93,114	57,849	30,014	30,087	30,031	30,093	30,033	30,070	30,065	30,089	160,678
Net Cash Inflows / (Outflows)		2,604	(147,920)	(51,467)	(44,080)	(75,965)	(34,536)	2,273	(2,656)	(33,438)	840	(16,163)	(10,905)	(27,676)	(38,865)	(477,955)
DIP Draws / (Repayments)	[16]	-	150,000	14,900	8,400	40,700	6,700	(2,200)	2,600	33,500	(900)	16,200	10,900	27,700	38,800	347,300
<b>Ending Balance</b>		<b>163,282</b>	<b>165,362</b>	<b>128,795</b>	<b>93,114</b>	<b>57,849</b>	<b>30,014</b>	<b>30,087</b>	<b>30,031</b>	<b>30,093</b>	<b>30,033</b>	<b>30,070</b>	<b>30,065</b>	<b>30,089</b>	<b>30,023</b>	<b>30,023</b>

#### Notes:

[1] The purpose of this cash flow forecast is to estimate the liquidity requirements of the Sears Canada Group during the forecast period.

[2] Forecast Trade Receipts include collections from the sale of merchandise and services performed, net of returns, and inclusive of sales taxes. The sales forecast is based on historical sales patterns, seasonality and management's current expectations.

[3] Forecast Other Receipts include proceeds from the third-party liquidator relating to the sale of merchandise from the 45 closing stores.

[4] Forecast Payroll and Employee Related Costs are based on recent payroll amounts and include amounts to be paid under a Key Employee Retention Plan (KERP), subject to approval of the Court.

[5] Forecast Merchandise Vendor disbursements include payments to vendors for purchase of merchandise goods and other products.

[6] Forecast Non-Merchandise Vendor disbursements include selling, general, and administrative costs excluding rent, property taxes, sales taxes, pension costs, and some IT costs.

[7] Forecast Rent and Property Taxes includes payment to landlords, common-area maintenance costs, and property taxes paid on properties.

[8] Forecast Sales Taxes reflects net GST, HST, and PST amounts remitted to/from the federal and provincial governments. Payments are generally made one month in arrears.

[9] Forecast Pensions reflect monthly payments related to the defined benefit pension plan. The regular payments relating to the defined contribution pension plan are included in the Payroll and Employee Related Costs line above.

[10] Forecast IT Costs reflect disbursements made to the large IT-related vendors based on existing terms and conditions of the contract.

[11] Forecast Recovery of Expenses from Agent reflect reimbursements provided by the third-party liquidator agent of certain costs incurred by Sears Canada Group relating to the 45 closing stores.

[12] Forecast Capital Expenditures reflect estimated capital spending required to maintain the stores in the normal course of business.

[13] Forecast Professional Fees include legal and financial advisor fees associated with the CCAA proceedings and are based on estimates provided by the advisors.

[14] Forecast Repayments of Existing Credit Facilities reflect repayment of the existing credit facilities.

[15] Forecast DIP Fees and Interest Paid reflect all payments relating to the DIP facilities including commitment and other fees during the forecast period.

[16] Forecast DIP Draws / (Repayments) are based on funding requirements and maintaining a minimum \$30 million cash balance for the Sears Canada Group.

**CONFIDENTIAL APPENDIX "B"**

**APPENDIX "C"**  
**SISP**

## Schedule "A" Sale Process

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On June 22, 2017, Sears Canada Inc. and certain of its subsidiaries (collectively, "**Sears Canada**") sought and obtained protection under the *Companies' Creditors Arrangement Act* (the "**CCAA**") pursuant to an initial order (the "**Initial Order**") granted by the Ontario Superior Court of Justice (Commercial List) (the "**Court**"). The Initial Order contemplates Sears Canada pursuing all avenues of refinancing, restructuring, selling and reorganizing their Business and Property (each as therein defined) subject to prior approval of the Court.

### Sale and Investment Solicitation Process

1. This sale and investment solicitation process (the "**Sale Process**") sets out the manner in which (i) bids and proposals for a broad range of transaction alternatives involving the Business, assets (the "**Assets**") and/or leases (the "**Leases**") of Sears Canada, whether *en bloc* or any portion(s) thereof, will be solicited from interested parties, (ii) any Binding Bids and/or Binding Lease Proposals (each as defined below) received will be considered and negotiated with interested parties, (iii) any Binding Bids and/or Binding Lease Proposals as subsequently negotiated, may be selected as Successful Bid(s) (as defined below), and (iv) the Court's approval of such Successful Bid(s) will be sought, with an anticipated completion date of all transactions by no later than October 25, 2017.
2. The Sale Process shall be conducted by BMO Nesbitt Burns Inc. ("**BMO Capital Markets**", the "**Sale Advisor**") on behalf of Sears Canada and under the supervision of both the Special Committee of the Board of Directors of Sears Canada Inc. (the "**Special Committee**") and FTI Consulting Canada Inc. in its capacity as court-appointed monitor of Sears Canada (the "**Monitor**"). References to Sears Canada throughout this Sale Process shall mean the Special Committee in circumstances where the integrity of this Sale Process so requires (as determined by the Special Committee or any of the advisors, the Sale Advisor or the Monitor).
3. Parties who wish to have their bids or proposals considered with respect to the Business, Assets and/or Leases, whether as a whole or any portions thereof, shall participate in this Sale Process in accordance with the procedures set out herein.
4. The sale of the Business, Assets and/or Leases will be on an "as is, where is" basis and without surviving representations or warranties of any kind, nature, or description by Sears Canada, the Sale Advisor, the Monitor or any of their respective agents or estates, except to the extent set forth in a definitive transaction agreement executed by Sears Canada in accordance with this Sale Process.

### Solicitation Process

5. The Sale Process will be conducted as follows:
  - a. The Sale Advisor and Sears Canada with the assistance of its advisors and in consultation with the Monitor will:

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- (i) prepare a form of non-disclosure agreement acceptable to the Monitor ("**NDA**") to be executed by interested parties;
  - (ii) prepare forms of transaction documents to be used by interested parties in submitting bids and proposals to Sears Canada, the form and substance of such transaction documents to be acceptable to the Monitor after consultation with the DIP ABL Lenders and DIP Term Lenders (as defined in the Initial Order, and together the "**DIP Lenders**") (the "**Transaction Documents**");
  - (iii) solicit interest from parties to enter into NDAs, and begin analyzing the transaction alternatives;
  - (iv) require that all potential bidders that wish to participate in the Sale Process must sign an NDA in form acceptable to Sears Canada and the Monitor prior to participation in the Sale Process; and
  - (v) provide potential bidders who have executed an NDA with access to an electronic data room of due diligence information.
- b. Landlords may submit to the Sale Advisor proposals in connection with existing Leases to which they are a party (the "**Binding Lease Proposals**") provided that all such proposals must be received in binding form on or before 5:00 p.m. Eastern Daylight Time on August 15, 2017 (the "**Binding Lease Proposal Deadline**"), with a contemporaneous copy delivered to the Monitor;
- c. Parties interested in pursuing a transaction must submit binding offers based on the relevant forms of Transaction Documents including the items set out in paragraph 7 below (a "**Binding Bid**") by 5:00 p.m. Eastern Daylight Time on August 31, 2017 (the "**Binding Bid Deadline**") to the attention of the Sale Advisor as set out below, with a contemporaneous copy delivered to the Monitor; and
- d. Subject to the terms set forth herein, following the Binding Bid Deadline and the Binding Lease Proposal Deadline, Sears Canada and its advisors, in consultation with the Monitor and the DIP Lenders, may seek to negotiate final terms with one or more parties, and may select one or more Successful Bid(s) subject to the approval of the Court, all in accordance with the timeline set out in the process letter, which shall be in a form acceptable to the Monitor and the DIP Lenders, to be delivered by the Sale Advisor to interested parties.
6. The Sale Advisor may, in consultation with Sears Canada and the Monitor, and subject to the terms of the Definitive Documents (as defined in the Initial Order), engage local market leasing agents or real estate brokers to solicit Binding Bids or Binding Lease Proposals for discrete assets or assignments of leases.

#### **Submission of Binding Offers**

7. In order for a bid to be considered a Binding Bid, it shall comply with the following:

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- (i) it shall contain:
    - a. duly executed Transaction Documents;
    - b. the identity and contact information of the bidder and the identities of each person or entity that will be sponsoring or participating in such bid, including direct and indirect owners;
    - c. a blackline showing changes to the relevant Transaction Documents provided to the interested party by Sears Canada; and
    - d. evidence of authorization and approval to submit and consummate the bid from the bidder's board of directors (or comparable governing body);
  - (ii) it includes a letter stating that the bid is irrevocable for a period of at least 20 business days after the Binding Bid Deadline;
  - (iii) it provides written evidence of a firm, irrevocable financial commitment for all required funding or financing in connection with the bid;
  - (iv) a separate allocation of value to each individual Asset or Lease subject to the bid that is the subject of a valid and enforceable right of first refusal, option or similar right;
  - (v) it is accompanied by a cash deposit (the "**Deposit**") of 10% of the total cash purchase price contemplated by such bid, which shall be paid to the Monitor by wire transfer (to a bank account specified by the Monitor) and held in trust in accordance with this Sale Process;
  - (vi) it does not include any request for or entitlement to any break fee, expense reimbursement or similar type of payment;
  - (vii) it is not conditional upon:
    - a. the outcome of unperformed due diligence by the bidder, and/or
    - b. obtaining financing; and
  - (viii) it is received by the Binding Bid Deadline.
8. A Binding Lease Proposal shall comply with the following:
- (i) it shall contain:
    - a. duly executed relevant Transaction Documents;
    - b. the identity and contact information of the landlord contact person;
    - c. a blackline showing changes to the relevant Transaction Documents provided to the interested party by Sears Canada; and
    - d. evidence of authorization and approval to submit and consummate the proposal from the landlord's board of directors (or comparable governing body);
  - (ii) it includes a letter stating that the proposal is irrevocable for a period of at least 20 business days after the Binding Bid Deadline;
  - (iii) it provides written evidence of a firm, irrevocable financial commitment for all required funding or financing;
  - (iv) it is not conditional upon:

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- a. the outcome of unperformed due diligence by the landlord, and/or
    - b. obtaining financing;
  - (v) it is received by the Binding Lease Proposal Deadline; and
  - (vi) to the extent that a landlord intends to submit a Binding Lease Proposal contemplating a material modification of the Lease (a "**Lease Modification Proposal**"), such Lease Modification Proposal must, in addition to the foregoing requirements, contain landlord consent that the Sale Advisor and Sears Canada may share such Lease Modification Proposal with other bidders in the Sale Process who have signed NDAs.
9. Sears Canada, with the consent of the Monitor, the Sale Advisor and the DIP Lenders, may waive compliance with any one or more of the requirements specified in section 7 and 8 and deem a non-compliant bid or lease proposal to be a Binding Bid or Binding Lease Proposal, respectively, with the exception of a bid that is received after the Binding Bid Deadline or a lease proposal that is received after the Binding Lease Proposal Deadline.

#### **Evaluation of Competing Bids and Proposals and Court Approval**

10. Following the Binding Bid Deadline and the Binding Lease Proposal Deadline, as applicable, Sears Canada shall consult with the Monitor, the Sale Advisor and the DIP Lenders and decide whether to (i) continue negotiations with a selected number of bidders that have submitted Binding Bids and/or Binding Lease Proposals, with a view to selecting one or more non-overlapping Bindings Bids and/or Binding Lease Proposals (collectively, the "**Successful Bid(s)**") upon approval of the Board of Directors of Sears Canada, and (ii) take such steps as are necessary to finalize and consummate the Successful Bid(s). Sears Canada shall have no obligation to conclude a sale arising out of this Sale Process and reserves the right and unfettered discretion to reject any bid or proposal (including any Binding Bid and any Binding Lease Proposal), but shall not do so without the approval of the Monitor after consultation with the DIP Lenders. If Sears Canada does select any Successful Bid(s), it shall be under no obligation to accept the highest bid.
11. Following selection of a Successful Bid(s), Sears Canada and its advisors in consultation with the Monitor shall seek to settle any necessary definitive agreement(s) with respect to the Successful Bid(s) in form and substance acceptable to the DIP Lenders and the Board of Directors of Sears Canada. Once all necessary definitive agreement(s) with respect to a Successful Bid have been finalized, Sears Canada will apply to the Court as soon as reasonably practicable for an order in form and substance acceptable to the Monitor and the DIP Lenders (an "**Approval and Vesting Order**") approving such Successful Bid and authorizing Sears Canada to (i) enter into any and all necessary agreements with respect to the Successful Bid, (ii) undertake such other actions as may be necessary to give effect to such Successful Bid, and (iii) implement the transaction(s) contemplated in such Successful Bid.

#### **Deposits**

12. All Deposits shall be retained by the Monitor and invested in an interest bearing trust account. If one or more Successful Bids are selected and an Approval and Vesting Order is granted in connection therewith, the Deposit paid in connection with such Successful Bid(s) (plus applicable interest) will be non-refundable and shall, upon closing of the transaction

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contemplated by such Successful Bid(s), be applied to the purchase price to be paid in connection with such Successful Bid(s) or be dealt with as otherwise set out in the definitive agreement(s) entered into in connection with such Successful Bid(s). Any Deposit (plus applicable interest) delivered with a Binding Bid that is not selected as a Successful Bid, will be returned to the applicable bidder within ten (10) business days of the date of expiration of such Binding Bid or an earlier date as may be determined by Sears Canada, in consultation with the Monitor and the Sale Advisor.

### **Consents and Information**

13. Any amendments to this Sale Process, including the relevant dates and deadlines set forth herein, may only be made with the written consent of the Special Committee, the Monitor and the DIP Lenders, or by further order of the Court.
14. Notwithstanding anything else contained herein, Sears Canada, in its reasonable business judgment and in consultation with the Sale Advisor, the Monitor and the DIP Lenders may, from time to time, withdraw any Leases or Assets from this Sale Process in accordance with the CCAA, and Sears Canada's rights under the Initial Order.
15. If any DIP Lender intends to participate as a bidder in this Sale Process, such party must provide written notice of such intention (the "**Participation Notice**") to the Sale Advisor, with a copy to the Monitor, on or before July 17, 2017 (the "**Participation Notice Deadline**"). Any DIP Lender who delivers a Participation Notice shall not be entitled to any Bid Information or Confidential Information (each as defined below). The failure of such parties to deliver a Participation Notice by the Participation Deadline shall render such parties unable to participate as a bidder in this Sale Process.
16. Subject to the confidentiality terms hereof, the Sale Advisor shall provide regular updates to the DIP Lenders and their advisors with respect to matters related to the Sale Process. Any information that is provided by the Sale Advisor, Sears Canada, the Monitor or their advisors to any of the DIP Lenders or their advisors, in respect of the Sale Process, including regarding any participants therein, any bids received or terms thereof or otherwise ("**Confidential Information**"), will be provided on a strictly confidential basis only and such parties shall not be permitted to share such Confidential Information with anyone other than any other DIP Lenders or the DIP Lenders' advisors, without the consent of Sears Canada and the Sale Advisor in consultation with the Monitor.

In addition, the following highly-sensitive information will solely be provided on a strictly confidential basis only to the Restricted Process Observers (as defined below), notwithstanding the terms of any bids or proposals received: the identity of the bidders; the particular Assets, Leases and/or Business that are the subject of a particular Binding Bid or Binding Lease Proposal; the proposed purchase price for the Business, Assets and/or Leases identified in a Binding Bid or Binding Lease Proposal; and the number of bidders that are considering or have submitted Binding Bids and/or Binding Lease Proposals for a particular Asset, Lease or Business, and copies of all bids or proposals received in the Sale Process (collectively, the "**Bid Information**"). The Monitor will maintain a list of personnel and/or categories of personnel who have a need to know the Bid Information, including personnel and/or categories of personnel of the financial and legal advisors to the DIP Lenders (the "**Restricted Process Observers**"). No Bid Information

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will be provided to any individual who is not a Restricted Process Observer and, notwithstanding the terms of the DIP Facilities (as defined in the Initial Order), Restricted Process Observers shall only be permitted to share such Bid Information with other Restricted Process Observers unless the prior written consent of the Monitor in consultation with the Sale Advisor is obtained.

17. Subject to the terms hereof, the Special Committee or its designate may participate in the negotiations under the Sale Process and shall give instructions to Sears Canada's advisors in respect of or relating to this Sale Process. Certain members of management of Sears Canada have advised the Special Committee and Sears Canada's advisors that they intend to submit a bid or proposal. Management of Sears Canada involved in the design and development of any bid or proposal will not be provided with Confidential Information or Bid Information, including information about Binding Bids or Binding Lease Proposals that third parties have made or information about whether any particular party has made a Binding Bid or Binding Lease Proposal, and may be subject to further restrictions as may be determined from time to time by the Special Committee in consultation with Sears Canada's advisors and the Monitor.
18. **Under no circumstances should an interested party communicate with management of Sears Canada without one of the Sale Advisor, the Monitor or Osler, Hoskin & Harcourt LLP ("Osler"), legal advisor to Sears Canada, present.**
19. All communications relating to a potential bid must be addressed to the Sale Advisor. Interested parties must adhere to the following communication protocol:
  - (i) members of Sears Canada's management team will only be available to prospective bidders at times scheduled by BMO Capital Markets as it determines necessary to advance the Sale Process, provided that such meetings or other communications with management must be supervised by any one of the Sale Advisor, the Monitor or Osler; and
  - (ii) members of Sears Canada's management and outside advisory teams have been instructed to direct any and all inquiries from prospective bidders to BMO Capital Markets.

**Failure to adhere to this communication protocol may result in disqualification of the interested party from the Sale Process and/or the rejection of any bid made by such interested party.**

**APPENDIX "D"**  
**AMENDMENT TO DIP ABL CREDIT AGREEMENT**

**THIS FIRST AMENDING AGREEMENT** made as of the \_\_\_\_ day of July, 2017

**B E T W E E N:**

**SEARS CANADA INC., as Borrower**

**and**

**THE LENDERS NAMED HEREIN**

**and**

**THE L/C ISSUING BANK NAMED HEREIN**

**and**

**WELLS FARGO CAPITAL FINANCE CORPORATION CANADA  
as Administrative Agent, Collateral Agent and Swingline Lender**

**WHEREAS** Sears Canada Inc., as borrower (the “**Borrower**”), the banks, financial institutions and other institutional lenders listed on the signature pages thereto (the “**Lenders**”), the L/C Issuing Bank party thereto, and Wells Fargo Capital Finance Corporation Canada, as administrative agent and collateral agent (the “**Agent**”), entered into that certain senior secured superpriority debtor-in-possession amended and restated credit agreement dated as of June 22, 2017 (the “**Credit Agreement**”) pursuant to which certain credit facilities continued to be made available to the Borrower during the pendency of its proceedings under the *Companies’ Creditors Arrangement Act* (Canada);

**AND WHEREAS**, the Borrower, the Agent and the Lenders have agreed to make certain amendments to the Credit Agreement on the terms and conditions set forth in this amending agreement (this “**Amending Agreement**”).

**NOW THEREFORE THIS AMENDING AGREEMENT WITNESSES THAT** in consideration of the covenants and agreements contained herein and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto agree as follows:

**Section 1 General**

In this Amending Agreement (including the recitals) unless otherwise defined or the context otherwise requires, all capitalized terms shall have the respective meanings specified in the Credit Agreement, as amended hereby.

## **Section 2 To be Read with Credit Agreement**

This Amending Agreement is an amendment to the Credit Agreement. Unless the context of this Amending Agreement otherwise requires, the Credit Agreement and this Amending Agreement shall be read together and shall have effect as if the provisions of the Credit Agreement and this Amending Agreement were contained in one agreement. The term “**Agreement**” when used in the Credit Agreement means the Credit Agreement and the schedules thereto, as previously amended and as amended by this Amending Agreement and as may be further amended, revised, replaced, supplemented or restated from time to time.

## **Section 3 Headings**

The division of this Amending Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Amending Agreement. The terms “**this Amending Agreement**”, “**hereof**”, “**hereunder**” and similar expressions refer to this Amending Agreement and not to any particular Article, Section or other portion hereof and include any agreement supplemental hereto. Unless otherwise specified, references herein to Articles and Sections are to Articles and Sections of this Amending Agreement.

## **Section 4 Number**

Words importing the singular number only shall include the plural and *vice versa*, words importing the masculine gender shall include the feminine and neuter genders and *vice versa*.

## **Section 5 Amendments**

5.1 Amendments to Section 1.01. Section 1.01 of the Credit Agreement is hereby amended as follows:

- (a) by amending the definition of “Guarantee and Collateral Agreement” to replace the reference therein to “April 20, 2017” with a reference to “April 19, 2017”.
- (b) by deleting the definition of “Letters of Credit” in its entirety, and by substituting the following in its stead:

“Letters of Credit” means the collective reference to Commercial L/Cs and Standby L/Cs; individually, a “Letter of Credit”, and includes the Prepetition L/Cs. For greater certainty, the L/C Obligations under the Prepetition L/Cs and any Reimbursement Obligations with respect to any Prepetition L/Cs drawn on or after the Effective Date shall form part of the Prepetition Obligations.

- (c) by deleting the definition of “Loan Parties” in its entirety and by substituting the following in its stead:

“Loan Parties” means “(i) each Group Member party to a Loan Document prior to the Effective Date, (ii) any Affiliate of the Borrower which is an

applicant in the CCAA Proceedings or that has the benefit of the protections under the CCAA Proceedings (including SearsConnect) and (ii) any other Affiliate of the Borrower that is a party to a Loan Document, provided that, for the purposes of the definitions of Eligible Credit Card Accounts Receivable, Eligible In-Transit Inventory, Eligible Inventory, Inventory Value and Net Recovery Rate, any reference to “Loan Party” shall mean only Borrower or Corbeil, as applicable, and any reference to “Loan Parties” shall mean only Borrower and Corbeil.”

- (d) by deleting the definition of “Prepetition Advances” in its entirety, and by substituting the following in its stead:

“Prepetition Advances” means (i) all Advances made under the Existing Credit Agreement prior to the Effective Date and (ii) all Reimbursement Obligations with respect to any Prepetition L/Cs drawn on or after the Effective Date.

- (e) by deleting the definition of “Prepetition L/Cs” in its entirety, and by substituting the following in its stead:

“Prepetition L/Cs” means all Letters of Credit issued under the Existing Credit Agreement and outstanding as of the Effective Date.

- (f) by deleting the definition of “Prepetition Obligations” in its entirety, and by substituting the following in its stead:

“Prepetition Obligations” means all Obligations under the Prepetition Advances, the L/C Obligations in respect of the Prepetition L/Cs and all other Obligations (as defined in the Existing Credit Agreement) under the Existing Credit Agreement, including, for greater certainty, the Reimbursement Obligations with respect to any Prepetition L/Cs drawn on or after the Effective Date.

5.2 Amendment to Section 2.11. Paragraph (c) of section 2.11 of the Credit Agreement is hereby amended by deleting clause (i) thereof in its entirety and by substituting the following in its stead:

“(i) *first*, to repay all Prepetition Obligations (other than undrawn Prepetition L/Cs but, for greater certainty, including the Reimbursement Obligations with respect to any Prepetition L/Cs drawn on or after the Effective Date) in full,”

5.3 Amendment to Section 2.17. Section 2.17 of the Credit Agreement is hereby amended by deleting clause (b) thereof in its entirety and by substituting the following in its stead:

“(b) to pay the Obligations and the fees and expenses related to this Agreement and the CCAA Proceedings, provided that no proceeds shall be applied to the Prepetition Obligations,”

5.4 Amendment to Section 3.05. Section 3.05 of the Credit Agreement is hereby deleted in its entirety and substituted with the following in its stead:

“Reimbursement Obligation of the Borrower. If any draft is paid under any Letter of Credit, the Borrower shall reimburse the L/C Issuing Bank for the amount of (a) the draft so paid and (b) any taxes, fees, charges or other costs or expenses incurred by the L/C Issuing Bank in connection with such payment, not later than 12:00 Noon on (i) the Business Day that the Borrower receives notice of such draft, if such notice is received on such day prior to 10:00 A.M. or (ii) if clause (i) above does not apply, the Business Day immediately following the day that the Borrower receives such notice; provided, that, other than with respect to any Reimbursement Obligation in respect of a Prepetition L/C which shall be repaid in accordance with Section 2.11(c) hereof, if the total reimbursement amount set forth in clauses (a) or (b) above is not less than CAN\$5,000,000 (or \$5,000,000, as applicable) or CAN\$500,000 (or \$500,000, as applicable), respectively, the Borrower may, subject to the conditions to borrowing set forth herein, request that such reimbursement be financed with a Base Rate Advance, Prime Rate Advance or Swingline Advance in an equivalent amount and, to the extent so financed, the Borrower’s obligation to make such payment shall be discharged and replaced by the resulting Advance, provided, that if the Borrower’s Reimbursement Obligation is not satisfied in full pursuant to the foregoing, the outstanding amount of such Reimbursement Obligation shall be immediately and automatically be deemed to be an Advance hereunder in the currency of the applicable Reimbursement Obligation (notwithstanding any failure to satisfy any condition precedent set forth in Article IV for such Advance) and initially, shall bear interest at the rate then applicable to Base Rate Advances or Prime Rate Advances, as applicable. Each such payment shall be made to the L/C Issuing Bank at its address for notices referred to herein in Canadian Dollars or Dollars (or if the Letter of Credit is issued in a currency other than Canadian Dollars or Dollars, in such currency or the Canadian Dollar equivalent thereof calculated in accordance with the provisions of Section 3.10) and in immediately available funds. Interest shall be payable on any such amounts from the date on which the

relevant draft is paid until payment in full at the rate set forth in (x) until the Business Day next succeeding the date of the relevant notice, Section 2.08(a)(i) (for amounts denominated in Canadian Dollars) or 2.08(a)(iii) (for amounts denominated in Dollars), and (y) thereafter, Section 2.08(b).”

- 5.5 Amendment to Section 3.11. Section 3.11 of the Credit Agreement is hereby amended by deleting the last sentence thereof in its entirety and by substituting the following in its stead:

“All such cash collateral shall be held as additional collateral security for the Obligations in one or more accounts in the name of the Agent and for the benefit of the Lenders (collectively, the “L/C Collateral Account”) and neither such cash collateral nor the L/C Collateral Account shall be subject to the Court Charges.”

## **Section 6 Representations and Warranties**

In order to induce the Agent and the Lenders to enter into this Amending Agreement, the Borrower represents and warrants to the Agent and to the Lenders as follows:

- (a) the representations and warranties made by each Loan Party in or pursuant to the Loan Documents are true and correct on and as of the date hereof in all material respects, except to the extent that (A) such representations or warranties are qualified by a materiality standard, in which case they shall be true and correct in all respects, (B) such representations or warranties expressly relate to an earlier date (in which case such representations and warranties were true and correct in all material respects as of such earlier date), and (C) such representations and warranties relate to Section 5.01(f) of the Credit Agreement, in which case such representation and warranties shall be limited to clause (c) of the definition of “Material Adverse Effect”;
- (b) all necessary corporate, company or partnership action has been taken to authorize the execution, delivery and performance of this Amending Agreement by the applicable Loan Parties and each has duly executed and delivered this Amending Agreement;
- (c) each of (i) this Amending Agreement and (ii) the Credit Agreement, as amended by this Credit Agreement, is a legal, valid and binding obligation of each of the applicable Loan Parties enforceable against them in accordance with its terms (except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors’ rights generally and by principles of equity); and
- (d) as of the date hereof and after giving effect to this Amending Agreement, no Event of Default or Default under the Credit Agreement exists.

## **Section 7 Conditions Precedent**

This Amending Agreement shall be subject to and conditional upon the following conditions precedent being satisfied:

- (a) execution and delivery of this Amending Agreement by the Loan Parties, the Agent and the Required Lenders;
- (b) all action on the part of the Loan Parties necessary for the valid execution, delivery and performance by the Loan Parties of this Amending Agreement shall have been duly and effectively taken; and
- (c) payment of fees and expenses incurred and due pursuant to the Credit Agreement and the other Loan Documents as at the date hereof, including those owing pursuant to Section 8 hereof.

## **Section 8 Expenses**

The Borrower agrees to pay all reasonable, documented out-of-pocket expenses of the Agent incurred in connection with this Amending Agreement, including but not limited to preparation, negotiation, execution, documentation and enforcement of this Amending Agreement and the Credit Agreement and all legal fees and disbursements related thereto, all in accordance with Section 9.04 of the Credit Agreement.

## **Section 9 Continuance of Credit Agreement and Loan Documents**

The Credit Agreement and Loan Documents, except as expressly amended by this Amending Agreement, shall be and continue in full force and effect and are hereby confirmed and the rights and obligations of all parties thereunder shall not be affected or prejudiced in any manner except as specifically provided for herein.

## **Section 10 No Waiver**

The Borrower acknowledges and confirms that none of the terms contained in this Amending Agreement shall operate or be construed as a waiver of any of the provisions of the Loan Documents or any Default or Event of Default existing on or prior to the date hereof or any future Default or Event of Default.

## **Section 11 Counterparts**

This Amending Agreement may be executed in any number of separate counterparts, each of which shall be deemed an original and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Amending Agreement by telecopier or by direct electronic transmission of a pdf formatted counterpart shall be effective as delivery of a manually executed counterpart of this Amending Agreement.

**Section 12 Governing Law**

This Amending Agreement shall be construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and each of the parties hereto irrevocably attorns to the jurisdiction of the courts of the Province of Ontario.

**Section 13 Successors and Assigns**

This Amending Agreement shall be binding on and enure to the benefit of the respective successors and permitted assigns of each of the parties hereto in accordance with the terms of the Credit Agreement.

**[Signature Pages to Follow]**

**IN WITNESS WHEREOF** the parties hereto have executed this Amending Agreement as of the day and year first above written.

**SEARS CANADA INC.,** as Borrower

By: \_\_\_\_\_  
Name:  
Title:

**WELLS FARGO CAPITAL FINANCE  
CORPORATION CANADA,** as Agent, a Lender  
and Swingline Lender

By: \_\_\_\_\_  
Name:  
Title:

**ROYAL BANK OF CANADA, as a Lender**

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

**BANK OF AMERICA, N.A., CANADA  
BRANCH, as a Lender**

By: \_\_\_\_\_  
Name:  
Title:

**CANADIAN IMPERIAL BANK OF  
COMMERCE, as a Lender**

By: \_\_\_\_\_  
Name:  
Title:

**APPENDIX "E"**  
**AMENDMENT TO DIP TERM CREDIT AGREEMENT**

**AMENDMENT #1 TO SENIOR SECURED SUPERPRIORITY CREDIT AGREEMENT**

This Amendment #1 to Senior Secured Superpriority Credit Agreement is dated as of July \_\_\_\_, 2017 (the “**Amending Agreement**”).

**B E T W E E N:**

**SEARS CANADA INC., as Borrower**

**and**

**THE TERM DIP LENDERS NAMED HEREIN**

**and**

**GACP FINANCE CO., LLC  
as Term DIP Agent**

**and**

**GACP FINANCE CO., LLC  
as Lead Arranger**

**and**

**GACP FINANCE CO., LLC  
as Syndication Agent**

**and**

**TPG SPECIALTY LENDING, INC.  
as Documentation Agent**

**WHEREAS** Sears Canada Inc., as borrower (the “**Borrower**”), the banks, financial institutions and other institutional lenders listed on the signature pages thereto (the “**Term DIP Lenders**”), GACP Finance Co., LLC, as administrative agent and syndication agent (the “**Term DIP Agent**”), entered into that certain senior secured superpriority credit agreement dated as of June 22, 2017 (the “**Term DIP Credit Agreement**”) pursuant to which the Term DIP Lenders agreed to extend the Term DIP Loan to the Borrower during the pendency of its proceedings under the CCAA subject to and in accordance with the terms of such Term DIP Credit Agreement.

**AND WHEREAS**, the Borrower, the Term DIP Agent and the Term DIP Lenders have agreed to make certain amendments to the Term DIP Credit Agreement in accordance with and subject to the terms and conditions set forth in this Amending Agreement.

**NOW THEREFORE THIS AMENDING AGREEMENT WITNESSES THAT** in consideration of the covenants and agreements contained herein and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto agree as follows:

## **Section 1 General**

In this Amending Agreement (including the recitals) unless otherwise defined or the context otherwise requires, all capitalized terms shall have the respective meanings specified in the Term DIP Credit Agreement, as amended hereby. This Amending Agreement constitutes a Loan Document.

## **Section 2 To be Read with Term DIP Credit Agreement**

This Amending Agreement is an amendment to the Term DIP Credit Agreement. Unless the context of this Amending Agreement otherwise requires, the Term DIP Credit Agreement and this Amending Agreement shall be read together and shall have effect as if the provisions of the Term DIP Credit Agreement and this Amending Agreement were contained in one agreement. The term “**Agreement**” when used in the Term DIP Credit Agreement means the Term DIP Credit Agreement and the schedules thereto, as previously amended and as amended by this Amending Agreement and as may be further amended, revised, replaced, supplemented or restated from time to time.

## **Section 3 Headings**

The division of this Amending Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Amending Agreement. The terms “**this Amending Agreement**”, “**hereof**”, “**hereunder**” and similar expressions refer to this Amending Agreement and not to any particular Article, Section or other portion hereof and include any agreement supplemental hereto. Unless otherwise specified, references herein to Articles and Sections are to Articles and Sections of this Amending Agreement.

## **Section 4 Number**

Words importing the singular number only shall include the plural and *vice versa*, words importing the masculine gender shall include the feminine and neuter genders and *vice versa*.

## **Section 5 Amendments**

- 5.1 Amendment to Section 1.01. The definition of “Loan Parties” in Section 1.01 of the Term DIP Credit Agreement is hereby amended by deleting the definition thereof in its entirety and by substituting the following in its stead:

“Loan Parties” means (i) each of the Borrower and Corbeil; (ii) any Affiliate of the Borrower which is an applicant in the CCAA Proceedings or that has the benefit of the protections under the CCAA Proceedings (including SearsConnect); and (iii) any Affiliate of the Borrower that is a party to a Loan Document; provided that, for the purposes of the definitions of Eligible Credit Card Accounts Receivable, Eligible Inventory, Inventory Value and Net Recovery Rate, any reference to “Loan Party” shall mean only Borrower or Corbeil, as applicable, and any reference to “Loan Parties” shall mean only Borrower and Corbeil.”

- 5.2 Amendment to Section 2.08. Paragraph (c) of Section 2.08 of the Term DIP Credit Agreement is hereby amended by deleting clause (i) thereof in its entirety and by substituting the following in its stead:

“(i) *first*, to repay all “Prepetition Obligations” under and as defined in the ABL DIP Credit Agreement (other than undrawn Prepetition L/Cs (as such term is defined in the ABL DIP Credit Agreement) but, for greater certainty, including the Reimbursement Obligations (as

such term is defined in the ABL DIP Credit Agreement) with respect to any Prepetition L/Cs drawn on or after the Effective Date) in full,”

### **Section 6 Representations and Warranties**

In order to induce the Term DIP Agent and the Term DIP Lenders to enter into this Amending Agreement, the Borrower represents and warrants to the Term DIP Agent and to the Term DIP Lenders as follows:

- (a) the representations and warranties made by each Loan Party in or pursuant to the Loan Documents are true and correct on and as of the date hereof in all material respects, except to the extent that (A) such representations or warranties are qualified by a materiality standard, in which case they shall be true and correct in all respects, (B) such representations or warranties expressly relate to an earlier date (in which case such representations and warranties were true and correct in all material respects as of such earlier date), and (C) such representations and warranties relate to Section 5.01(f) of the Term DIP Credit Agreement, in which case such representation and warranties shall be limited to clauses (c) and (d) of the definition of “Material Adverse Effect”;
- (b) all necessary corporate, company or partnership action has been taken to authorize the execution, delivery and performance of this Amending Agreement by the applicable Loan Parties and each has duly executed and delivered this Amending Agreement;
- (c) each of (i) this Amending Agreement, and (ii) the Term DIP Credit Agreement as amended by this Amending Agreement, is a legal, valid and binding obligation of each of the applicable Loan Parties enforceable against them in accordance with its terms (except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors’ rights generally and by principles of equity); and
- (d) as of the date hereof and after giving effect to this Amending Agreement, no Event of Default or Default under the Term DIP Credit Agreement exists.

### **Section 7 Conditions Precedent**

This Amending Agreement shall be subject to and conditional upon the following conditions precedent being satisfied:

- (a) execution and delivery of this Amending Agreement by the Loan Parties, the Term DIP Agent and the Required Lenders;
- (b) all action on the part of the Loan Parties necessary for the valid execution, delivery and performance by the Loan Parties of this Amending Agreement shall have been duly and effectively taken; and
- (c) payment of fees and expenses incurred by the Term DIP Agent and/or the Term DIP Lenders and due pursuant to the Term DIP Credit Agreement and the other Loan Documents as at the date hereof, including those owing pursuant to Section 8 hereof.

### **Section 8 Expenses**

The Borrower agrees to pay all reasonable costs and expenses of the Term DIP Agent incurred in connection with this Amending Agreement and all related matters, including but not limited to preparation, negotiation, execution, documentation and enforcement of this Amending Agreement and the

Term DIP Credit Agreement and all legal fees and disbursements related thereto, all in accordance with Section 8.04 of the Credit Agreement.

**Section 9 Continuance of Term DIP Credit Agreement and Loan Documents**

The Term DIP Credit Agreement and Loan Documents, except as expressly amended by this Amending Agreement, shall be and continue in full force and effect and are hereby confirmed and the rights and obligations of all parties thereunder shall not be affected or prejudiced in any manner except as specifically provided for herein. The Borrower confirms and agrees that (i) all of its covenants and obligations under the Term DIP Credit Agreement and each other Loan Document to which it is a party are reaffirmed and remain in full force and effect on a continuous basis and (ii) the execution of this Amending Agreement shall not operate as a waiver of any right, power or remedy of Term DIP Agent or any Term DIP Lender, constitute a waiver of any provision of any of the Loan Documents or serve to effect a novation of the Obligations.

**Section 10 No Waiver**

The Borrower acknowledges and confirms that none of the terms contained in this Amending Agreement shall operate or be construed as a waiver of any of the provisions of the Loan Documents or any Default or Event of Default existing on or prior to the date hereof or any future Default or Event of Default.

**Section 11 Counterparts/Electronic Signatures**

This Amending Agreement may be executed in any number of separate counterparts, each of which shall be deemed an original and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Amending Agreement by telecopier or by direct electronic transmission of a pdf formatted counterpart shall be effective as delivery of a manually executed counterpart of this Amending Agreement.

**Section 12 Governing Law**

This Amending Agreement shall be construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and each of the parties hereto irrevocably attorns to the jurisdiction of the courts of the Province of Ontario.

**Section 13 Successors and Assigns**

This Amending Agreement shall be binding on and enure to the benefit of the respective successors and permitted assigns of each of the parties hereto in accordance with the terms of the Term DIP Credit Agreement.

**[Signature Pages to Follow]**

IN WITNESS WHEREOF, the parties hereto have executed this Amending Agreement as of the date first above written.

**SEARS CANADA INC.,** as Borrower

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[Signature Page to Credit Agreement – Borrower]

**GACP FINANCE CO., LLC,**  
as Term DIP Agent and a Term DIP Lender

By: \_\_\_\_\_  
Name:  
Title:

**TPG SPECIALTY LENDING, INC.,**  
as Documentation Agent and a Term DIP Lender

By: \_\_\_\_\_  
Name:  
Title:

**CORPORATE CAPITAL TRUST, INC.,**  
as a Term DIP Lender

By: \_\_\_\_\_  
Name:  
Title:

**CANYON VALUE REALIZATION FUND, L.P.,  
as a Term DIP Lender  
By: Canyon Capital Advisors LLC,  
its investment Advisor**

By: \_\_\_\_\_  
Name:  
Title:

**CANYON BLUE CREDIT INVESTMENT FUND,  
L.P., as a Term DIP Lender  
By: Canyon Capital Advisors LLC,  
its Co-Investment Advisor**

By: \_\_\_\_\_  
Name:

**By: Canyon Partners Real Estate LLC,  
its Co-investment Advisor**  
By: \_\_\_\_\_  
Name:  
Title:

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS  
AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA  
INC., *et al.*

Court File No:

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**FIRST REPORT TO THE COURT  
SUBMITTED BY FTI CONSULTING CANADA INC.,  
IN ITS CAPACITY AS MONITOR**

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Monitor